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 No. 28] NEW DELHI, JULY 7—JULY 13, 2013, SATURDAY/ASHADHA 16—ASHADHA 22, 1935

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
 Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
 PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
 Statutory Orders and Notifications Issued by the Ministries of the Government of India
 (Other than the Ministry of Defence)

कार्मिक, लेक शिकायत तथा पेशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 5 जुलाई 2013

कानून 1264 —केन्द्रीय सरकार एतद्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए दिल्ली विशेष पुलिस स्थापना (सीबीआई) द्वारा संस्थापित आरसी 21/2008-कोल तथा आरसी 19/2012-कोल (आईटीएटी समूह के मामले) में आपराधिक पुनरीक्षण याचिका में सीबीआई की ओर से कलकत्ता उच्च न्यायालय में अपीलेंपुनरीक्षणों या इससे संबंधित तथा सम्बद्ध अन्य मामलों में उपस्थित होने के लिए श्री अस्त्वा घोष, वकील को विशेष लेक अधियोजक के रूप में नियुक्त करती है।

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 5th July, 2013

S.O. 1264.—In exercise of the powers conferred by sub-section (8) of section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri Arunava Ghosh, Advocate as Special Public Prosecutor for his appearance on behalf of CBI in Criminal Revision Petitions in RC 21/2008-Kol and RC 19/2012-Kol (ITAT Group of cases) instituted by the Delhi Special Police Establishment (C.B.I.) in the Calcutta High Court and appeals/revisions or other matters connected therewith and incidental thereto.

[No. 225/27/2013-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 9 जुलाई 2013

[सं. 225/27/2013-एवीडीII]

राजीव जैन, अवर सचिव

कानून 1265 —केन्द्रीय सरकार एतद्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं 2) की धारा 24 की उपधारा (8)

द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए दिल्ली विशेष पुलिस स्थापना (सीबीआई) द्वारा संस्थापित दिल्ली, स्थित दिल्ली उच्च न्यायालय में, तत्कालीन भारत के मुख्य न्यायाधीश श्री ए एन राय तथा अन्य की हत्या के प्रयास से संबंधित आरसी 11 (ए)/75-एसीयू-VI/एनडी के अंतर्गत आपराधिक अपील सं 436/1976 तथा 443/1976 में एवं इससे सम्बद्ध अन्य और अनुषांगिक मामलों में दिल्ली उच्च न्यायालय में पेश होने के लिए श्री राजीव मेहरा, भारत के अपर सालिसिट जनरल को विशेष लेक अभियोजक के रूप में नियुक्त करती है।

[सं° 225/24/2013-एवीडी-II]
राजीव जैन, अवर सचिव

New Delhi, the 9th July, 2013

S.O. 1265.—In exercise of the powers conferred by sub-section (8) of section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri Rajeev Mehra, Additional Solicitor General of India, in Delhi High Court as Special Public Prosecutor for appearing in Criminal Appeal No's. 436/1976 and 443/1976 pertaining to RC 11 (A)/75-ACU-VI/ND related to Attempt to murder the then Chief Justice of India Mr. A.N. Ray and other instituted by the Delhi Special Police Establishment (C.B.I.) in the Delhi High Court at Delhi and other matters connected therewith and incidental thereto.

[No. 225/24/2013-AVD-II]
RAJIV JAIN, Under Secy.

वित्त मंत्रालय
(वित्तीय सेवाएं विभाग)

नई दिल्ली, 10 जून, 2013

कानून 1266 —वित्तीय आस्तियों का प्रतिभूतिकरण एवं पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन अधिनियम, 2002 की धारा 21 की उप-धारा (i) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री आरू वी० वर्मा, अध्यक्ष एवं प्रबंध निदेशक, राष्ट्रीय आवास बैंक (एनएचबी) के रजिस्ट्रर तथा प्रबंध निदेशक एवं मुख्य कार्यकारी अधिकारी (केन्द्रीय रजिस्ट्रर), भारतीय केन्द्रीय आस्ति प्रतिभूतिकरण पुनर्गठन और प्रतिभूति हित रजिस्ट्री (सीईआरएसएआई) के रूप में उनके कार्यकाल को अगले छः माह के लिए अर्थात् 01.04.2013 से 30.09.2013 तक या अगले आदेशों तक, जो भी पहले हो, बदलती है।

2 श्री आरू वी० वर्मा, राष्ट्रीय आवास बैंक के अध्यक्ष एवं प्रबंध निदेशक के रूप में अपने कर्तव्यों के अतिरिक्त केन्द्रीय रजिस्ट्रर का कार्यभार भी संभालेंगे।

[फॉसं° 56/5/2007-बीओ-II (डीआरटी) रिकवरी]
मिहिर कुमार, निदेशक (रिकवरी)

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 10th June, 2013

S.O. 1266.—In exercise of the powers conferred by sub-section (i) of section 21 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Central Government hereby extends the tenure of Shri R.V. Verma, Chairman and Managing Director, National Housing Bank (NHB), as the Registrar and Managing Director & Chief Executive Officer (Central Registrar), Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) for a further period of six months with effect from 01-04-2013 till 30.09.2013 or until further orders, whichever is earlier.

2. Shri R.V. Verma shall hold the charge of Central Registrar in addition to his duties as Chairman & Managing Director, National Housing Bank (NHB).

[F. No. 56/5/2007-BO-II (DRT) Recovery]
MIHIR KUMAR, Director (Recovery)

नई दिल्ली, 1 जुलाई, 2013

कानून 1267.—भारतीय स्टेट बैंक अधिनियम, 1955 (1955 का 23) की धारा 21क के साथ परिवर्त धारा 21 की उप-धारा (1) के खण्ड (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करके, एतद्वारा, श्री अनिल गर्ग (जन्म तिथि : 27.05.1963) को उनकी नियुक्ति की अधिसूचना की तरीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, भारतीय स्टेट बैंक के ओपाल स्थानीय बोर्ड में सदस्य नामित करती है।

[फॉसं° 3/16/2012-बीओ-II]
विजय मल्होत्रा, अवर सचिव

New Delhi, the 1st July, 2013

S.O. 1267.—In exercise of the powers conferred by clause (c) of sub-section (1) of Section 21, read with section 21A of the State Bank of India Act, 1955 (23 of 1955), the Central Government, in consultation with Reserve Bank of India, hereby nominates Shri Anil Garg (DOB: 27.05.1963), as a Member on the Bhopal Local Board of State Bank of India, for a period of three years from the date of notification of his appointment or until further orders, whichever is earlier.

[F.No. 3/16/2012-BO-I]
VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 1 जुलाई, 2013

कानून 1268 —भारतीय स्टेट बैंक अधिनियम, 1955 (1955 का 23) की धारा 21क के साथ परिवर्त धारा 21 की उप-धारा (1) के

खण्ड (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करके, एतद्वारा, श्री अनिल अरोड़ा (जन्म तिथि : 08.08.1969) को उनकी नियुक्ति की अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, भारतीय स्टेट बैंक के चण्डीगढ़ स्थानीय बोर्ड में सदस्य नामित करती है।

[फ०सं० 3/26/2012 बीओI]
विजय मल्होत्रा, अवर सचिव

New Delhi, the 1st July, 2013

S.O. 1268.—In exercise of the powers conferred by clause (c) of sub-section (1) of Section 21, read with section 21A of the State Bank of India Act, 1955 (23 of 1955), the Central Government, in consultation with Reserve Bank of India, hereby nominates Shri Anil Arora (DOB: 08.08.1969), as a Member on the Chandigarh Local Board of State Bank of India, for a period of three years from the date of notification of his appointment or until further orders, whichever is earlier.

[F.No. 3/26/2012-BO-I]
VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 1 जुलाई 2013

कानून 1269.—भारतीय स्टेट बैंक अधिनियम, 1955 (1955 का 23) की धारा 21क के साथ परिवर्तन धारा 21 की उप-धारा (1) के खण्ड (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करके, एतद्वारा, श्री एम्बी० राणानाथ (जन्म तिथि : 26.09.1962) को उनकी नियुक्ति की अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, भारतीय स्टेट बैंक के हैदराबाद स्थानीय बोर्ड में सदस्य नामित करती है।

[फ०सं० 3/39/2012 बीओI]
विजय मल्होत्रा, अवर सचिव

New Delhi, the 1st July, 2013

S.O. 1269.—In exercise of the powers conferred by clause (c) of sub-section (1) of Section 21, read with section 21A of the State Bank of India Act, 1955 (23 of 1955), the Central Government, in consultation with Reserve Bank of India, hereby nominates Shri M.V. Ranganath (DOB: 26.09.1962), as a Member on the Hyderabad Local Board of State Bank of India, for a period of three years from the date of notification of his appointment or until further orders, whichever is earlier.

[F.No. 3/39/2012-BO-I]
VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 1 जुलाई 2013

कानून 1270.—भारतीय स्टेट बैंक अधिनियम, 1955 (1955 का 23) की धारा 21क के साथ परिवर्तन धारा 21 की उप-धारा (1) के खण्ड (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करके, एतद्वारा, श्री मुनीष कुमार जैन (जन्म तिथि : 25.12.1949) को उनकी नियुक्ति की अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, भारतीय स्टेट बैंक के लखनऊ स्थानीय बोर्ड में सदस्य नामित करती है।

[फ०सं० 3/47/2012 बीओI]
विजय मल्होत्रा, अवर सचिव

New Delhi, the 1st July, 2013

S.O. 1270.—In exercise of the powers conferred by clause (c) of sub-section (1) of Section 21, read with section 21A of the State Bank of India Act, 1955 (23 of 1955), the Central Government, in consultation with Reserve Bank of India, hereby nominates Shri Munish Kumar Jain (DOB: 25.12.1949), as a Member on the Lucknow Local Board of State Bank of India, for a period of three years from the date of notification of his appointment or until further orders, whichever is earlier.

[F.No. 3/47/2012-BO-I]
VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 2 जुलाई 2013

कानून 1271.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारत सरकार, भारतीय रिजर्व बैंक से की सिफारिश पर, एतद्वारा, घोषणा करती है कि उक्त अधिनियम की धारा 10 की उप-धारा (1) के खण्ड (ग) के उप-खण्ड (i) के उपबंध बैंक आफ इंडिया पर लगू नहीं होंगे, जहां तक उनका संबंध बैंक की अध्यक्ष एवं प्रबंध निदेशक श्रीमती वी० आर० अथर का इंडो जांबिया बैंक लि० (आईजेडबी०) के बोर्ड में गैर-कार्यकारी अध्यक्ष के रूप में नामित होने से है।

[फ०सं० 13/23/2012 बीओI]
विजय मल्होत्रा, अवर सचिव

New Delhi, the 2nd July, 2013

S.O. 1271.—In exercise of the powers conferred by Section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Government of India on the recommendations of the Reserve Bank of India, hereby declare that the provisions of sub-clause (i) of clause (c) of sub-section (1) of Section 10 of the said Act shall not apply to Bank of India in so far as it relates to the nomination of Smt. V.R. Iyer, Chairperson & Managing Director of the Bank on the Board of Indo Zambia Bank Ltd. (IZB) as Non-executive Chairperson.

[F.No. 13/23/2012-BO-I]
VIJAY MALHOTRA, Under Secy.

(राजस्व विभाग)
(केन्द्रीय उत्पाद शुल्क एवं सीमा शुल्क बोर्ड)

नई दिल्ली, 2 जुलाई 2013

कांगड़ा 1272.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में राजस्व विभाग, केन्द्रीय उत्पाद शुल्क एवं सीमा शुल्क बोर्ड के निमलिखित कार्यालय, जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञन प्राप्त कर लिया है को अधिसूचित करती है :

आयुक्त, केन्द्रीय उत्पाद शुल्क, सीमा शुल्क, सेवाकर का कार्यालय, मेरठ-द्वितीय, मेरठ, उत्तर प्रदेश ।

[फॉर्म सं. ई-11017/1/2012-हिंदीII]
 चन्द्र भान नारनौली, निदेशक (राजभाषा)

(Department of Revenue)
 (CENTRAL BOARD OF EXCISE AND CUSTOMS)

New Delhi, the 2nd July, 2013

S.O. 1272.—In pursuance of Sub-rule (4) of Rule 10 of the Official Language (use for official purposes of the Union) Rules, 1976, The Central Government hereby notifies the following office of the Department of Revenue, Central Board of Excise & Customs, whereof more than 80% of the staff have acquired the working knowledge of Hindi:

Office of the Commissioner Central Excise, Customs & Service Tax, Meerut-II, Meerut, Uttar Pradesh.

[F.No. E-11017/1/2012-Hindi-II]
 CHANDER BHAN NARNAULI, Director (OL)

नई दिल्ली, 4 जुलाई 2013

कांगड़ा 1273.—भारतीय स्टेट बैंक अधिनियम, 1955 (1955 का 23) की धारा 21क के साथ परिवर्त धारा 21 की उप-धारा (1) के खण्ड (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करके, एतद्वारा, श्री सरत चन्द्र भद्र (जन्म तिथि : 10021950) को उनकी नियुक्ति की अधिसूचना की तरीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, भारतीय स्टेट बैंक के भुवनेश्वर स्थानीय बोर्ड में सदस्य नामित करती है।

[फॉर्म सं. 3/21/2012-बीओII]
 विजय मल्होत्रा, अवर सचिव

New Delhi, the 4th July, 2013

S.O. 1273.—In exercise of the powers conferred by clause (c) of sub-section (1) of Section 21, read with section 21A of the State Bank of India Act, 1955 (23 of 1955), the Central Government, in consultation with Reserve Bank of India, hereby nominates Shri Sarat Chandra Bhadra (DOB: 10.02.1950), as a Member on the Bhubaneswar Local Board of State Bank of India, for a period of three years from the date of notification of his appointment or until further orders, whichever is earlier.

[F.No. 3/21/2012-BO-I]
 VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 8 जुलाई 2013

कांगड़ा 1274.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) और खंड 8 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा (3) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, बैंक आफ बड़ैदा के कार्यपालक निदेशक श्री सुधीर कुमार जैन (जन्म तिथि: 21071960) को उनके द्वारा पदभार ग्रहण करने की तरीख से पांच वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, सिंडिकेट बैंक के अध्यक्ष एवं प्रबंध निदेशक के रूप में नियुक्त करती है।

[फॉर्म सं. 4/4/2012-बीओII]
 विजय मल्होत्रा, अवर सचिव

New Delhi, the 8th July, 2013

S.O. 1274.—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 of sub-clause (1) of Clause 8 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, hereby appoints Sh. Sudhir Kumar Jain (DOB: 21.07.1960), Executive Director, Bank of Baroda as Chairman and Managing Director, Syndicate Bank for a period of five years from the date of taking over charge or until further orders, whichever is earlier.

[F.No. 4/4/2012-BO-I]
 VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 8 जुलाई 2013

कांगड़ा 1275.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) और खंड 8 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा (3) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, इंडियन बैंक के कार्यपालक निदेशक श्री राजीव ऋषि (जन्म तिथि:

30081959) को दिनांक 01082013 को या उसके बाद पदभर ग्रहण करने की तरीख से पंच वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, सैक्रल बैंक आफ इंडिया के अध्यक्ष एवं प्रबंध निदेशक के रूप में नियुक्त करती है।

[फॉर्म 4/4/2012 बीओI]
विजय मल्होत्रा, अवर सचिव

New Delhi, the 8th July, 2013

S.O. 1275.—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 of sub-clause (1) of Clause 8 of The Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, hereby appoints Sh. Rajeev Rishi (DoB: 30.08.1959), Executive Director, Indian Bank as Chairman and Managing Director, Central Bank of India, for a period of five years from the date of taking over charge on or after 01.08.2013 or until further orders, whichever is earlier.

[F.No. 4/4/2012-BO-I]
VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 10 जुलाई 2013

कानून 1276.—जीवन बीमा निगम अधिनियम, 1956 (1956 का 31) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एटद्वारा, श्री एस० बी० मैनक, प्रबंध निदेशक, भारतीय जीवन बीमा निगम को 10 जुलाई 2013 से उनकी अधिवार्षिता की तरीख तक अथवा अगले आदेशों तक, जो भी पहले हो, उक्त निगम के सदस्य के रूप में नियुक्त करती है।

[फॉर्म ए-15011/06/2010-Ins. I]
प्रिया कुमार, निदेशक (बीमा)

New Delhi, the 10th July, 2013

S.O. 1276.—In exercise of the powers conferred by section 4 of the Life Insurance Corporation Act, 1956 (31 of 1956), the Central Government hereby appoints Shri S.B. Mainak, Managing Director, Life Insurance Corporation of India as a Member of the said Corporation with effect from 10th July, 2013 till the date of his superannuation or till further orders, whichever is earlier.

[F. No. A-15011/06/2010-Ins. I]
PRIYA KUMAR, Director (Insurance)

मानव संसाधन विकास मंत्रालय

(उच्चतर शिक्षा विभाग)

(राजभाषा यूनिट)

नई दिल्ली, 24 जून, 2013

कानून 1277.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम 4 के अनुसरण में मानव संसाधन विकास मंत्रालय (उच्चतर शिक्षा विभाग) एवं (स्कूल शिक्षा एवं साक्षरता विभाग) के अन्तर्गत ब्रह्मशः अलीगढ़ मुस्लिम विश्वविद्यालय, अलीगढ़-202002 तथा जवाहर नवोदय विद्यालय, अवान, रामदास, अमृतसर (ਪंजाब) को, ऐसे कार्यालयों के रूप में, जिसके 80 प्रतिशत से अधिक कर्मचारीवृद्ध ने हिन्दी का कार्यसाधक ज्ञन प्राप्त कर लिया है अधिसूचित करती है।

[सं 11011-1/2013-राष्ट्र]

अनन्त कुमार सिंह, संयुक्त सचिव

MINISTRY OF HUMAN RESOURCE DEVELOPMENT
(Department of Higher Education)

(O.L. Unit)

New Delhi, the 24th June, 2013

S.O. 1277.—In pursuance of sub-rule (4) of rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies Aligarh Muslim University, Aligarh-202002 and Jawahar Navodaya Vidyalaya, Awan, Ramdas, Amritsar (Punjab) respectively under the Ministry of Human Resource Development, (Department of Higher Education) and (Department of School Education and Literacy) as offices, whose more than 80% members of the staff have acquired working knowledge of Hindi.

[No. 11011-1/2013-O.L.U.]
ANANT KUMAR SINGH, Jt. Secy.

वाणिज्य और उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 5 जुलाई 2013

कानून 1278.—केन्द्रीय सरकार, नियंत (क्वालिटी नियंत्रण और निरीक्षण) नियम, 1964 के नियम 12 के साथ पठित, नियंत (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स केवी शर्मा एंड कं. डा ओजलर्स फेरम के पीछे निकट तन्या होटल, माइमोलम, वास्को-दा-गामा गोवा-403802 को भारत में इस अधिसूचना के प्रकाशन की तरीख से तीन वर्ष की अवधि के लिए वाणिज्य मंत्रालय की अधिसूचना संख्यांक काआ 3975 तारीख 20 दिसम्बर, 1965 से उपाबद्ध अनुसूची विनिर्दिष्ट खनिजों और अयस्कों समूह-I उपाबद्ध अर्थात् लैह अयस्क का निम्नलिखित शर्तों के अधीन रहते हुए, उक्त खनिजों और अयस्कों का गोवा में नियंत से पूर्व निरीक्षण

करने के लिए एक अधिकारी के रूप में मान्यता प्रदान करती है,
अर्थात्

(i) मैसर्स केसी शर्मा एंड कं. डा ओजल्स फेरम के पीछे
निकट तान्या होटल, माइमोलम, वास्को-दा-गामा गोवा-403802,
खनिज और अयस्कों समूह-I का निर्यात (निरीक्षण) नियम, 1965 के
नियम 4 के अधीन निरीक्षण करने के लिए उनके द्वारा अपनाई गई
निरीक्षण की पद्धति की जांच करने के लिए इस निमित्त निर्यात निरीक्षण
परिषद् द्वारा नामनिर्दिष्ट अधिकारियों को पर्याप्त सुविधाएं देगी; और

(ii) मैसर्स केसी शर्मा एंड कं. डा ओजल्स फेरम के पीछे
निकट तान्या होटल, माइमोलम, वास्को-दा-गामा, गोवा-403802, इस
अधिसूचना के अधीन अपने कृत्यों के पालन में निदेशक (निरीक्षण
और क्वालिटी नियंत्रण) द्वारा समय-समय पर लिखित में दिए गए नियमों
से आबद्ध होंगे।

[फ सं 4/2/2013-निर्यात निरीक्षण]
ए के त्रिपाठी, संकुक्त सचिव

MINISTRY OF COMMERCE AND INDUSTRY
(Department of Commerce)

New Delhi, the 5th July, 2013

S.O. 1278.—In exercise of the powers conferred by the sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), read with rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognises M/s. KC Sharma & Co. located behind Dr. Ozlers forum, Near Taaniya Hotel, Maimolem, Vasco da Gama, Goa-403802, India as an agency for a period of three years from the date of publication of this notification in the Official Gazette, for the inspection of Minerals and Ores Group-I, namely, Iron Ore, specified in the Schedule annexed to the Ministry of Commerce notification number S.O. 3975, dated the 20th December, 1965, prior to export of said minerals and ores at Goa, subject to the following conditions, namely:—

(i) M/s. K.C. Sharma & Co. located behind Dr. Ozlers forum, Near Taaniya Hotel, Maimolem, Vasco da Gama, Goa-403802, shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to examine the method of inspection followed by them in carrying out the inspection under rule 4 of the Export of Minerals and Ores-Group I (Inspection) Rules, 1965; and

(ii) M/s. KC Sharma & Co. located behind Dr. Ozlers forum, Near Taaniya Hotel, Maimolem, Vasco da Gama, Goa-403802, in the performance of its function under this notification shall be bound by such directions as the Director of Inspection and Quality Control may give in writing, from time to time.

[F. No. 4/2/2013-Export Inspection]
A. K. TRIPATHY, Jt. Secy.

उपरोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपरोक्ता मामले विषय)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 3 जून, 2013

कानून 1279.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिये गये मानक (को) में संशोधन किया गया/किये गये हैं।

अनुसूची

| क्रम संख्या | संशोधित भारतीय मानक (कों) | संशोधन की संख्या वर्ष और शीर्षक | संशोधन की संख्या और तिथि |
|-------------|---------------------------|---|--------------------------|
| 1 | आईएस 2888: 2004 | संशोधन संख्या नं 3 प्रसाधन साबुन—विशिष्टि मई 2013 (तीसरा पुनरीक्षण) | 15 जून, 2013 |

इस भारतीय मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन 9 बहादुरशाह जप्तर मार्ग, नई दिल्ली-110 002 क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई, तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिल्वनन्तापुरम में बिक्री हेतु उपलब्ध हैं। भारतीय मानकों को <http://www.standardsbis.in> द्वारा इंटरनेट पर खरीदा जा सकता है।

[संदर्भ सीएचडी 25/आईएस 2888]
डॉ राजीव के ज्ञा, वैज्ञानिक 'एफ एवं प्रमुख (रसायन)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION
(Department of Consumer Affairs)
(BUREAU OF INDIAN STANDARDS)

New Delhi, the 3rd June, 2013

S.O. 1279.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendments to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued:

SCHEDULE

| Sl. No. | No. and Year of the Indian Standards | No. and year of the amendment | Date from which the amendment shall have effect |
|---------|---|-------------------------------|---|
| 1. | IS 2888:2004 Toilet Soap-Specification (Third revision) | Amendment No. 3 May 2013 | 15 June, 2013 |

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram. On line purchase of Indian Standard can be made at: <http://www.standardsbis.in>.

[Ref. CHD 25/IS 2888]

Dr. RAJIV K. JHA, Scientist 'F' & Head (CHD)

नई दिल्ली, 24 जून, 2013

कानून 1280.—भारतीय मानक ब्लूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्लूरो एतद्वारा अधिसूचित करता है कि जिस भारतीय मानक का विवरण नीचे अनुसूची में दिया गया है वह वे स्थापित हो गया है:

अनुसूची

| | | | |
|-------------|-------------------------------|---|--------------|
| क्रम संख्या | स्थापित भारतीय मानक की संख्या | नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक की संख्या, | स्थापित तिथि |
| मानक(कों) | वर्ष और शीर्षक | भारतीय मानक | |
| (कों) | | अथवा मानकों, | |
| | | यदि कोई हो, की | |
| | | संख्या और वर्ष | |

| (1) | (2) | (3) | (4) |
|-----|--|-----|------------|
| 1 | आईएस 13778 (भाग 2): 2013 | — | 24-06-2013 |
| | कुण्डलन तरें_ परीक्षण पद्धतियां | | |
| | भाग 2 आयाम ज्ञात करना (पहला पुनरीक्षण) | | |

इस भारतीय मानक की एक प्रति भारतीय मानक ब्लूरो, मानक भवन, 9, बहदुर शाह जफर मार्ग, नई दिल्ली-110 002 क्षेत्रीय कार्यालयों, नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई, तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूजे तथा तिरुवनन्तपुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ ईटी 33/वी-108]

आरू सी० मैथ्रू वैज्ञानिक 'एफ एवं प्रमुख (विद्युत तकनीकी)

New Delhi, the 24th June, 2013

S.O 1280.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which is given in the

Schedule hereto annexed have been issued:

SCHEDULE

| Sl. No. | No. and Year of the Indian Standard | No. and year of the Indian Standards, if any Superseded by the New Indian Standard | Date of Establishment |
|---------|---|--|-----------------------|
| (1) | (2) | (3) | (4) |
| 1 | IS 13778 (Part 2): 2013 | — | 24-06-2013 |
| | Winding Wires-Test Methods Part 2 Determination Dimensions (First Revision) | | |

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. ET 33/T-108]
R.C. MATHEW, Scientist 'F' & Head (Electrotechnical)

नई दिल्ली, 2 जुलाई 2013

कानून 1281.—भारतीय मानक ब्लूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्लूरो एतद्वारा अधिसूचित करता है कि जिस भारतीय मानकों का विवरण नीचे अनुसूची में दिया गया है वह वे स्थापित हो गये हैं।

अनुसूची

| | | | |
|-------------|-------------------------------|---|--------------|
| क्रम संख्या | स्थापित भारतीय मानक की संख्या | नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक की संख्या, | स्थापित तिथि |
| मानक(कों) | वर्ष और शीर्षक | भारतीय मानक | और तिथि |
| (कों) | | अथवा मानकों, | |
| | | यदि कोई हो, की | |
| | | संख्या और वर्ष | |

| (1) | (2) | (3) | (4) |
|-----|---|-----|-----------|
| 1 | आईएस/आई सी 60079 (भाग 26): 2006 विस्तृती पर्यावरण भाग 26 उपस्कर सुरक्षा स्तर (ई पी एल) जी ए वाले उपस्कर | — | 2-07-2013 |

इस भारतीय मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुरशाह जपर मार्ग, नई दिल्ली-110 002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई मुम्बई तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तपुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ ईटी 22/टी-84]

आरू सी० मैथ्यू कैज़िनिक 'एफ एवं प्रमुख (विद्युत तकनीकी)

New Delhi, the 2nd July, 2013

S.O. 1281.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued:

SCHEDULE

| Sl. No. | No. and Year of the Indian Standard | No. and year of the Indian Standards, if any Superseded by the New Indian Standard | Date of Established |
|------------|--|--|------------------------|
| (1) | (2) | (3) | (4) |
| 1 | IS/IEC 60079 (Part 26) : 2006 Explosive Atmosphere Part 26 Equipment with Equipment Protection Level (EPL) Ga | — | 02-07-2013 |

Copy of this Standard are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. ET 22/T-84]

R.C. MATHEW, Scientist 'F' & Head (Electrotechnical)

नई दिल्ली, 2 जुलाई 2013

कानून 1282.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिस भारतीय मानकों का विवरण नीचे अनुसूची में दिया गया है वे स्थापित हो गये हैं:

अनुसूची

| | |
|---|--|
| क्रम स्थापित भारतीय मानक(कों) की संख्या, वर्ष और शीर्षक | नये भारतीय मानक स्थापित तिथि द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष |
|---|--|

| (1) | (2) | (3) | (4) |
|-----|---|-----|--------------|
| 1 | आईएस 15967 (भाग 2): 2013 नलिकाकार प्रतिदीप्ति लैम्पों के लिए संधारित भाग 2 कार्यकारिता अपेक्षाएं | — | 2 जुलाई 2013 |

इस भारतीय मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुरशाह जपर मार्ग, नई दिल्ली-110 002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई मुम्बई तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तपुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ ईटी 23/टी-91]

आरू सी० मैथ्यू कैज़िनिक 'एफ एवं प्रमुख (विद्युत तकनीकी)

New Delhi, the 2nd July, 2013

S.O. 1282.—In pursuance of clause (b) of sub-rule (1) of Rules 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued:

SCHEDULE

| Sl. No. | No. and Year of the Indian Standards | No. and year of the Indian Standards, if any, Superseded by the New Indian Standard | Date of Established |
|------------|---|---|------------------------|
| (1) | (2) | (3) | (4) |
| 1 | IS 15967 (Part 2) : 2013 Capacitors for Use Intubular Fluorescent and Other Discharge Lamp Circuits Part 2 Performance Requirements | — | 02 July, 2013 |

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. ET 23/T-91]

R.C. MATHEW, Scientist 'F' & Head (Electrotechnical)

नई दिल्ली, 2 जुलाई 2013

कानून 1283.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन भारतीय मानकों का विवरण नीचे अनुसूची में दिया गया है वे स्थापित हो गये हैं:

अनुसूची

| | | | |
|----------------|-------------------------------|------------------------|--------------|
| क्रम संख्या | स्थापित भारतीय मानक की संख्या | नये भारतीय मानक संख्या | स्थापित तिथि |
| मानक (कों) | द्वारा अतिक्रमित | भारतीय मानक | |
| की संख्या, | भारतीय मानक | अथवा मानकों, | |
| वर्ष और शीर्षक | यदि कोई हो की | संख्या और वर्ष | |

| (1) | (2) | (3) | (4) |
|-----|--|---------|---------|
| 1 | आई एस/आई एस ओ 14708-1-2000 शल्य चिकित्सा के अन्तर्रोपण संक्रिय अन्तर्रोपण योग्य चिकित्सीय युक्तियां भाग 1 निर्माताओं द्वारा उपलब्ध कराई जाने वाली सुरक्षा चिन्हांकन एवं सूचना की सामान्य अपेक्षाएं | — | मई 2013 |
| 2 | आई एस/ आई एस ओ 14708-3-2008 शल्य चिकित्सा के अन्तर्रोपण संक्रिय अन्तर्रोपण योग्य चिकित्सीय युक्तियां भाग 3 अन्तर्रोपण योग्य न्यूरोस्टिम्यूलेटर्स | मई 2013 | |

इस मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुरशाह जफर मार्ग, नई दिल्ली-110 002 क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई, तथा शाखा कार्यालयों: अहमदाबाद, बंगलुरु, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूर्ण तथा कोची में बित्री हेतु उपलब्ध हैं।

[संर्व एम एच डी/जी-35]

एस किशोर कुमार, वैज्ञानिक 'एफ एच प्रमुख (एम एच डी)

New Delhi, the 2nd July, 2013

S.O. 1283.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued.

SCHEDULE

| Sl. No. | No. and Year of the Indian Standard | No. and year of the Indian Standards, if any Superseded by the New Indian Standard | Date of Establishment |
|---------|---|--|-----------------------|
| (1) | (2) | (3) | (4) |
| 1 | IS/ISO 14708-1: 2000 Implants for surgery active implantable medical devices | Part 1 General requirements for safety, marking and for information to be provided by the manufacturer | May 2013 |
| 2 | IS/ISO 14708-3: 2008 Implants for surgery active implantable medical devices Part 3 Implantable nerostimulators | Part 3 Implantable nerostimulators | May 2013 |

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Cochi.

[Ref. MHD/G-3.5]
S. KISHORE KUMAR, Scientist 'F' & Head (MHD)

नई दिल्ली, 3 जुलाई 2013

कानून 1284.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिस मानक का विवरण नीचे अनुसूची में दिया गया है वे स्थापित हो गया है:

अनुसूची

| क्रम संख्या | स्थापित भारतीय मानक (कों) | नये भारतीय मानक स्थापित तिथि | |
|-------------|---|------------------------------|------------|
| | की संख्या, | द्वारा अतिक्रमित | |
| | वर्ष और शीर्षक | भारतीय मानक | |
| | | अथवा मानकों, | |
| | | यदि कोई हो, की | |
| | | संख्या और वर्ष | |
| (1) | (2) | (3) | (4) |
| 1 | आई एस 8758: 2013 अस्थाई संरचनाओं और पंडालों के निर्माण में अनिंश्मन के लिए एहतियाती- रीति संहिता (दूसरा पुनरीक्षण) | — | 30-05-2013 |

इस भारतीय मानक की प्रति भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुरशाह जफर मार्ग, नई दिल्ली-110 002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई, तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पट्टना, पूर्ण तथा कोची में बिक्री हेतु उपलब्ध है।

[संदर्भ सीईडी/राजपत्र]

सी० आर० राजेन्द्र, वैज्ञानिक 'एफ एवं प्रमुख (सिविल इंजीनियरी)

New Delhi, the 3rd July, 2013

S.O. 1284.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standard, particulars of which are given in the Schedule hereto annexed have been established on the date indicated it:

SCHEDE

| Sl. No. | No. and Year of the Indian Standard | No. and year of Indian Standards, if any Superseded by the New Indian Standard | Date of Establishment |
|------------|---|--|--------------------------|
| (1) | (2) | (3) | (4) |
| 1 | IS 8758:2013 Fire Precautionary Measures in Construction of Temporary Structures and Pandals- Code of Practice | — | 30-05-2013 |

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices:

New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Kochi.

[Ref. CED/Gazette]
C. R. RAJENDRA, Scientist 'F' & Head (Civil Engg.)

नई दिल्ली, 4 जुलाई, 2013

का०आ० 1285.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिया गए हैं वे स्थापित हो गए हैं।

अनुसूची

| क्रम संख्या | स्थापित भारतीय मानक (कों) | नये भारतीय मानक स्थापित तिथि | |
|-------------|---|------------------------------|------------|
| | की संख्या, | द्वारा अतिक्रमित | |
| | वर्ष और शीर्षक | भारतीय मानक | |
| | | अथवा मानकों, | |
| | | यदि कोई हो, की | |
| | | संख्या और वर्ष | |
| (1) | (2) | (3) | |
| 1 | आई एस/ओएसओ 5416:2006 प्रत्यक्ष अवकारक लैहा- मैटेलिक लैहा ज्ञत करना-ब्रोमिन- मेथानाल टाइट्रीमेट्रिक पद्धति | — | 31 मई 2013 |
| 2 | आई एस/ओएसओ 10835:2007 प्रत्यक्ष अवकारक लैहा एवं तप्त इष्टिकाकृत लैहा- नमूने लेना तथा नमूने तैयार करना | — | 31 मई 2013 |
| 3 | आई एस/आईएसओ 15968:2000 प्रत्यक्ष अवकारक लैहा-तप्त इष्टिकाकृत लैहे की (एच बी अई आभासी घनत्व एवं जल अवशोषण ज्ञत करना | — | 31 मई 2013 |

इस भारतीय मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुरशाह जफर मार्ग, नई दिल्ली-110 002 क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई, तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद,

जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरुवानंतपुरम में बिक्री हेतु
उपलब्ध हैं।

[संदर्भ एमटीडी 30/टी-30]
पी० घोष, कैशनिक 'एफ एवं प्रमुख (एमटीडी)

New Delhi, the 4th July, 2013

S.O. 1285.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued established on the date indicated against each:

SCHEDULE

| Sl. No. | No. and Year of the Indian Standards Established | No. and year of the Indian Standards, if any Superseded by the New Indian Standard | Date of Established |
|------------|---|--|------------------------|
| (1) | (2) | (3) | (4) |
| 1 | IS/ISO 5416:2006 Direct reduced iron-Determination of metallic iron- Broine-Methanol Titrimetric method | — | 31 May, 2013 |
| 2 | IS/ISO 10835:2007 Direct reduced iron and hot briquetted iron-sampling and sample preparation | — | 31 May, 2013 |
| 3 | IS/ISO 15968:2000 Direct reduced iron-Determination of apparent density and water absorption of hot briquetted iron (HBI) | — | 31 May, 2013 |

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices New Delhi, Kolkata Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. MTD 30/T-30]

P. GHOSH, Scientist 'F' and Head (MTD)

नई दिल्ली, 5 जुलाई 2013

काण्डा 1286.—भारतीय मानक ब्यूरो नयम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिस भारतीय मानक का विवरण नीचे अनुसूची में दिया गया है वह स्थापित हो गया है:

अनुसूची

| क्रम संख्या | स्थापित भारतीय मानक(कों) | नये भारतीय मानक स्थापित तिथि | |
|----------------|---|--|------------|
| | की संख्या, | द्वारा अतिक्रमित | |
| | वर्ष और शीर्षक | भारतीय मानक | |
| | | अथवा मानकों, यदि कोई हो, की संख्या और वर्ष | |
| (1) | (2) | (3) | (4) |
| 1 | आई एस 15973 (भा० 2): 2013 विभिन्न प्रकार के लिम्नोसैल्प्यूलोसिक ऐनल के चयन और प्रयोग—रीति संहिता: भा० 2 हार्ड्बोर्ड्स | — | 31 मई 2013 |

इस भारतीय मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहदुर शाह जपर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चंडीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा कोची में बिक्री हेतु उपलब्ध हैं।

[संदर्भ सीईडी/राजपत्र]
सी० आ० राजेन्द्र, कैशनिक 'एफ एवं प्रमुख
(सिविल इंजीनियरी)

New Delhi, the 5th July, 2013

S.O. 1286.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standard, particulars of which are given in the Schedule below has been established on the date indicated against it:

SCHEDULE

| Sl. No. | No. and Year of the Indian Standards Established and Title | No. and year of the Indian Standards, if any Superseded by the New Indian Standard | Date of Established |
|------------|---|--|------------------------|
| (1) | (2) | (3) | (4) |
| 1 | IS 15973 (Part 2): 2013 Selection and use of various types of ligno- llulosic panel products: Part 2 Hardboards | — | 31 May 2013 |

Copy of the Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110 002 and its Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Kochi.

[Ref. CED/Gazette]

C. R. RAJENDRA, Scientist 'F' and Head (Civil Engg.)

नई दिल्ली, 5 जुलाई 2013

कानून 1287.—भारतीय मानक ब्लूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्लूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिये गये मानक(कों) में संशोधन किया गया/किये गये हैं:

अनुसूची

| क्रम संख्या | संशोधित भारतीय मानक की संख्या और वर्ष | संशोधन की संख्या और तिथि | संशोधन लागू होने की तिथि |
|----------------|---|--------------------------------|-----------------------------|
| (1) | (2) | (3) | (4) |
| 1 | आई एस 15834: 2008 | संशोधन संख्या 1 जून 2013 | 30 जून 2013 |

इस संशोधन की प्रतियां भारतीय मानक ब्लूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली, 110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों :

अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरुवनन्तपुरम में बिक्री हेतु उपलब्ध है।

[संदर्भ सीईडी/राजपत्र]

सी. आर० राजेन्द्रा, वैज्ञानिक 'एफ एवं प्रमुख (सिविल इंजीनियर)

New Delhi, the 5th July, 2013

S.O. 1287.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendment to the Indian Standard, particulars of which are given in the Schedule hereto annexed have been issued:

SCHEDULE

| Sl. No. | No. and Year of the Indian Standards | No. and year of the amendment | Date from which the amendment shall have effect |
|------------|--|-------------------------------------|---|
| 1. | IS 15834: 2008 | Amendment No. 1, June 2013 | 30.06.2013 |

Copy of this amendment is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110 002 and its Regional Offices : at New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Thiruvananthapuram.

[Ref. CED/Gazette]

C. R. RAJENDRA, Scientist 'F' and Head (Civil Engg.)

नई दिल्ली, 8 जुलाई 2013

कानून 1288.—भारतीय मानक ब्लूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्लूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिये गये मानक(कों) में संशोधन किया गया/किये गये हैं:

अनुसूची

| क्रम संख्या | संशोधित भारतीय मानक की संख्या और वर्ष | संशोधन की संख्या और तिथि | संशोधन लागू होने की तिथि |
|----------------|--|---|-----------------------------|
| (1) | (2) | (3) | (4) |
| 1 | आई एस 177: 1989 सूती ड्रिल—विशिष्टि 2008 | संशोधन संख्या 3 फरवरी 2013 (चौथा पुनरीक्षण) | 16 अगस्त, 2013 |

2 आई एस 1144: 1980 संशोधन संख्या 2 16 अगस्त, 2013
 सूती सेल्युलर कमीज़ फरवरी 2013
 के कपड़े की विशिष्टि
 (दूसरा पुनरीक्षण)

इन संशोधनों की प्रति भारतीय मानक ब्यूरो, मानक भवन, 9 बहदुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तपुरम में बिक्री हेतु उपलब्ध है।

[संदर्भ यैएक्सडी/जी-25]
 प्रभाकर राय, कैम्पिनिक 'ई एवं प्रमुख (यैएक्सडी)

New Delhi, the 8th July, 2013

S.O. 1288.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendments to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued:

SCHEDULE

| Sl. No. | No. and Year of the Indian Standards | No. and year of the amendment | Date from which the amendment shall have effect |
|------------|---|-------------------------------------|---|
| 1. | IS 177: 1989 Cotton Drills— Specification | Amendment No. 3 February 2013 | 16 August, 2013 |
| 2 | IS 1144: 1980 Specification for Cotton Cellular Shirting | Amendment No. 2 February 2013 | 16 August, 2013 |

Copy of these amendments are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. TXD/G-25]
 PRABHAKAR RAI, Scientist 'E' & Head (TXD)

नई दिल्ली, 8 जुलाई, 2013

कानून 1289.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम (4) के उपविनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं वे स्वीकृत कर दिए गए हैं:

अनुसूची

| क्रम संख्या | लाइसेंस संख्या सीएस/एल | स्वीकृत करने की तिथि | लाइसेंसधारी का नाम व पता | भारतीय मानक का शीर्षक | शा.मा | भाग | अनु | वर्ष |
|----------------|---------------------------|-------------------------|---|--|-------|-----|-----|------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 01 | एल-4800456 | 09/2013 | मैं जगदम्बा इप्पैक्स, प्लॉट नं 69, प्रथम तल, सैक्टर - 17, एचएसआईआईडीसी इण्डस्ट्रीयल इस्टेट, बहदुरगढ़ - 124505 जिल झज्जर (हरियाणा) | औद्योगिक सुरक्षा हेलमेट्स | 2925 | — | — | 1984 |
| 02 | एल-4803159 | 20/2013 | मैं अदिति बैरेजिस प्रा. लि खसरा नं 22/182, आदर्श नगर, आगरा कनाल रोड, जिला फरीदाबाद (हरियाणा) | पैकेजबन्द पेय जल (पैकेजबन्द प्राकृतिक मिनरल जल के अलावा) | 14543 | — | — | 2004 |

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
|----|------------|------------|---|---|-------|----|---|------|
| 03 | एल-4807066 | 27.05.2013 | मैं एचपीएल इलैक्ट्रिक एड पावर प्रा० लि० (यूनिट II), प्लट नं 375 क्यू० पेस सिटी II, सैक्टर-37, जिला गुड़ाँव - 122001 (हरियाणा) | ए सी स्पैतिक बंद्य मोटर, वर्ग 1 और 2 | 13779 | — | — | 1999 |
| 04 | एल-4805062 | 28.05.2013 | मैं औलंपिक सिलैंडर्स प्रा० लि० प्लट नं 147/7/1, 44 पुर रोड, गाँव रोहद, 43 के एम माइल्सेन के पास, बहादुरगढ़ - 124507 जिला झज्जर (हरियाणा) | अल्प दाब द्रवणीय गैसों के लिए 5 लीटर से अधिक जल क्षमता वाले वेल्डिंग अल्प कार्बन इस्पात के सिलेंडर भाग 1 द्रवित पैट्रोलियम गैस (द्रपैगै) के लिए सिलेंडर | 3196 | 01 | — | 2006 |
| 05 | एल-4805365 | 28.05.2013 | मैं बीयस इन्जीनियरिंग वर्क्स, 1285, जवाहर कालोनी, एन०आई०टी०, जिला फरीदाबाद - 121005 (हरियाणा) | निमज्जनीय पम्पसेट | 8034 | — | — | 2002 |
| 06 | एल-4807167 | 28.05.2013 | मैं दिवेश इलैक्ट्रीकल्ट्स, 204/18, शक्ति नगर, जिला गुड़ाँव - 122001 (हरियाणा) | सामान्य प्रयोजन के लिए एक फेजी ए सी प्रेरण मोटरें | 996 | — | — | 2009 |

[सं सीएमडी/13:11]
देश दीपक, वैज्ञानिक 'एफ एवं प्रमुख

New Delhi, the 8th July, 2013

S.O. 1289.—In pursuance of sub-regulation (5) of the regulation 4 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule:

SCHEDULE

| Sl. No. | Licences No. CM/L- | Grant Date | Name & Address of the Licensee | Title of the Standard | IS No. | Part. | Sec. | Year |
|------------|-----------------------|---------------|---|---|--------|-------|------|------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 01 | L-4800456 | 09.05.2013 | M/s Jagdamba Impex Plot No. 69, 1st Floor, Sector - 17, HSIIDC Industrial Estate, Bahadurgarh - 124505 Distt. Jhajjar (Haryana) | Industrial Safety Helmets | 2925 | — | — | 1984 |
| 02 | L-4803159 | 23.05.2013 | M/s Aditi Beverages (P) Ltd. Khasra No. 22/182, Adarsh Nagar, Agra Canal Road, Distt. Faridabad (Haryana) | Packaged Drinking Water (Other Than Packaged Natural Mineral Water) | 14543 | — | — | 2004 |

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
|----|-----------|------------|--|---|-------|----|---|------|
| 03 | L-4807066 | 27.05.2013 | M/s HPL Electric & Power Pvt. Ltd. (Unit II), Plot No. 375Q, Pace City II, Class 1 & 2 Sector - 37, Distt. Gurgaon - 122001 (Haryana) | AC Static Watthour Meters | 13779 | — | — | 1999 |
| 04 | L-4805062 | 28.05.2013 | M/s Olympic Cylinders Pvt. Ltd. Plot No. 147/7/1, 44 Ft. Road, Village Rohad, Near 43 KM Mile Stone, Bahadurgarh - 124507 Distt. Jhajjar (Haryana) | Welded Low Carbon Steel Cylinders Exceeding 5 Litre Water Capacity for Low Pressure Liquefiable Gases Part 1: Cylinders for Liquefied Petroleum Gases (LPG) | 3196 | 01 | — | 2006 |
| 05 | L-4805365 | 28.05.2013 | M/s Beas Engineering Works, 1285, Jawahar Colony, N.I.T., Distt. Faridabad - 121005 (Haryana) | Submersible Pumpsets | 8034 | — | — | 2002 |
| 06 | L-4807167 | 28.05.2013 | M/s Dinesh Electricals, 204/18, Shakti Nagar, Distt. Gurgaon - 122001 (Haryana) | Single Phase A.C. Induction Motors for General Purposes | 996 | — | — | 2009 |

[No. CMD/13:11]
DESH DEEPAK, Scientist 'F' & Head

नई दिल्ली, 9 जुलाई 2013

कानून 1290.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिये गए हैं वे स्थापित हो गए हैं:—

अनुसूची

| | | |
|-------------|---------------------------|--|
| क्रम संख्या | स्थापित भारतीय मानक (कों) | नये भारतीय मानक स्थापित तिथि |
| | की संख्या, | द्वारा अतिक्रमित |
| | वर्ष और शीर्षक | भारतीय मानक |
| | | अथवा मानकों, यदि कोई हो, की संख्या और वर्ष |

| (1) | (2) | (3) | (4) |
|-----|---|-----|------------|
| 1 | आई एस 15969: 2013 सुक्रालोस, खाद्य ग्रेड—विशिष्टि | — | 31 मई 2013 |

इस भारतीय मानक(कों) की प्रतियां भारतीय मानक ब्यूरो, मानक अन्वन, 9 बहदुर शाह जफर मार्ग, नई दिल्ली - 110002, फ्रेशीय कार्यालयों : नई दिल्ली, कोलकाता, चैनई, मुम्बई, चंडीगढ़ तथा शाश्वा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूर्णे तथा तिरुवनन्तपुरम में बिक्री हेतु

उपलब्ध हैं।

[सं. एफ.डी./जी-128]
कुमार अनिल, वैज्ञानिक 'एफ एवं प्रमुख (खाद्य एवं कृषि)

New Delhi, the 9th July, 2013

S.O. 1290.—In pursuance of Clause (b) of sub-rule (1) of Rules 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standard, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each:

SCHEDULE

| Sl. No. | No. and Year of the Indian Standard | No. and year of the Indian Standards, if any Superseded by the New Indian Standard | Date of Establishment |
|---------|---|--|-----------------------|
| (1) | (2) | (3) | (4) |
| 1 | IS 15969: 2013 Sucralose, Food Grade—Specification | — | 31 May, 2013 |

Copy of these standards are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. FAD/G-128]

KUMAR ANIL, Scientist 'F' and Head (Food & Agri.)

नई दिल्ली, 9 जुलाई, 2013

क्रमांक 1291.—भारतीय मानक ब्लूरे नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्लूरे एतद्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गये हैं।

अनुसूची

| क्रम संख्या | स्थापित भारतीय मानक (कों) | नये संख्या मानक (कों) | स्थापित तिथि |
|-------------|--|-----------------------|--------------|
| (1) | (2) | (3) | (4) |
| 1 | आईएस/आईएसओ 2822-1 : 1998 मवेशियों का चर्म और बछड़े की खाल भाग 1 देखों का विवरण | — | 31 मई 2011 |
| 2 | आईएस/आईएसओ 4683-1 : 1998 भेड़ की कच्ची खाल भाग 1 देखों का विवरण | — | 31 मई 2011 |
| 3 | आईएस/आईएसओ 4683-2 : 1999 भेड़ की कच्ची खाल भाग 2 अधिनाम और प्रस्तुतिकरण | — | 31 मई 2011 |
| 4 | आईएस/आईएसओ 7482-1 : 1998 बकरी की कच्ची खाल भाग 1 देखों का विवरण | — | 31 मई 2011 |

इस भारतीय मानक की प्रतियां भारतीय मानक ब्लूरे, मानक भवन, 9, बहदुशाह जफर मार्ग, नई दिल्ली-110 002 क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकता, चण्डीगढ़, चेन्नई, मुम्बई, तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूर्णे तथा तिरुवनन्तपुरम

में बिक्री हेतु उपलब्ध हैं। भारतीय मानकों को <http://www.standardsbis.in> द्वारा इंटरनेट पर खरीदा जा सकता है।

[संदर्भ सीएचडी 17/आईएस/आईएसओ 2822-1/4683-1 & 2/7482-1]

डॉ राजीव के ज्ञा, वैज्ञानिक 'एफ एवं प्रमुख (स्थायी)

New Delhi, the 9th July, 2013

S.O. 1291.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each:

SCHEDULE

| Sl. No. | No. and Year of the Indian Standard Established | No. and year of the Indian Standards, if any Superseded by the New Indian Standard | Date of Establishment |
|---------|--|--|-----------------------|
| (1) | (2) | (3) | (4) |
| 1. | IS/ISO 2822-1 : 1988 raw cattle hides and calf skins Part 1 : description of defects | — | 31 May, 2011 |
| 2. | IS/ISO 4683-1 : 1998 raw sheep skins Part 1 description of defects | — | 31 May, 2011 |
| 3. | IS/ISO 4683-2 : 1999 raw sheep skins Part 2 designation and presentation | — | 31 May, 2011 |
| 4. | IS/ISO 7482-1 : 1998 raw goat skins Part 1 description of defects | — | 31 May, 2011 |

Copy of these Standards are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram. On line purchase of Indian standards can be made at : <http://www.standardsbis.in>.

[Ref. CHD 17/IS/ISO 2822-1, 4683-1 & 2, 7482-1]

Dr. RAJIV K. JHA, Scientist 'F' & Head (CHD)

कोयल मंत्रालय

आदेश

नई दिल्ली, 9 जुलाई, 2013

कानून 1292.—कोयल धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उपधारा (1) के अधीन जारी की गई भारत सरकार के कोयल मंत्रालय की अधिसूचना संख्यांक कानून 3296, तारीख 26 अक्टूबर, 2012, जो भारत के राजपत्र, भाग II, खंड 3 उपखंड (ii), तारीख 3 नवम्बर, 2012 में प्रकाशित होने पर, उक्त अधिसूचना से संलग्न अनुसूची में वर्णित भूमि और भूमि में या उस पर के भू-सतह अधिकार (जिसे इसमें पश्चात् उक्त भूमि कहा गया है) उक्त अधिनियम की धारा 10 की उपधारा (1) के अधीन, सभी विलंगामों से मुक्त होकर, आत्मांतिक रूप से केन्द्रीय सरकार में निहित हो गए थे;

और, केन्द्रीय सरकार का यह समाधान हो गया है कि साउथ ईस्टर्न कोलफील्ड्स लिमिटेड, सीपट रोड, डाकघर संख्या 60, जिला-बिलासपुर-495006 (छत्तीसगढ़) (जिसे इसमें पश्चात् उक्त सरकारी कम्पनी कहा गया है), ऐसे निबंधों और शर्तों का जो केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे, अनुपालन करने के लिये रजाएं दृष्टि रखता है।

अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 11 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि इस प्रकार निहित उक्त 87646 हेक्टर (लागाण) या 216.57 एकड़ (लागाण) भूमि और उस पर के भू-सतह अधिकार, तारीख 3 नवम्बर, 2012 से केन्द्रीय सरकार में इस प्रकार निहित बने रहने की बजाय, निम्नलिखित निबंधों और शर्तों के अधीन रहते हुए, उक्त सरकारी कम्पनी में निहित हो जाएंगे, अर्थात्—

- (1) सरकारी कम्पनी, उक्त अधिनियम के उपबंधों के अधीन यथा अवधारित प्रतिकर, ब्याज, नुकसानी और वैसी ही मदों की बाबत् किए गए सभी संदर्भों की केन्द्रीय सरकार को प्रतिपूर्ति करेगी;
- (2) सरकारी कंपनी द्वारा शर्त (1) के अधीन, केन्द्रीय सरकार को संदेय रकमों का अवधारण करने के प्रयोजनों के लिए उक्त अधिनियम की धारा 14 के अधीन एक अधिकारण का गठन किया जाएगा और ऐसे किसी अधिकारण की सहायता के लिए नियुक्त व्यक्तियों के संबंधों में उपगत सभी व्यय, उक्त सरकारी कंपनी द्वारा वहन किए जाएंगे और इसी प्रकार निहित उक्त भूमियों में या उस पर के अधिकार के लिए या उसके संबंध में जैसे अपील आदि सभी विधिक कार्यवाहियों की बाबत् उपगत सभी व्यय भी, इसी प्रकार उक्त सरकारी कंपनी द्वारा वहन किए जाएंगे;
- (3) सरकारी कम्पनी, केन्द्रीय सरकार या उसके पदधारियों को, ऐसे किसी अन्य व्यय के संबंध में, क्षतिपूर्ति करेगी जो इस प्रकार निहित उक्त भूमियों में या उस पर के अधिकारों के बारे में

केन्द्रीय सरकार या उसके पदधारियों द्वारा या उनके विरुद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो;

- (4) सरकारी कम्पनी को, केन्द्रीय सरकार के पूर्व अनुमोदन के बिना, उक्त भूमियों को किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी; और
- (5) सरकार कम्पनी, ऐसे निवेद्यों और शर्तों का, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिए जाएं, या अधिरोपित की जाए, पालन करेगी।

[पं सं 43015/06/2011-पीआरआईडब्ल्यू-I]
वी एस राणा, अवर सचिव

MINISTRY OF COAL

ORDER

New Delhi, the 9th July, 2013

S.O. 1292.—Whereas on the publication of the notification of the Government of India in the Ministry of Coal number S.O. 3296, dated the 26th October, 2012 in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 3rd November, 2012, issued under sub-section (1) of section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the land as surface rights in or over the land described in the Schedule appended to the said notification (hereinafter referred to as the said land) vested absolutely in the Central Government free from all encumbrances under sub-section (1) of section 10 of the said Act.

And whereas the Central Government is satisfied that the South Eastern Coalfields Limited, Seepat Road, Post Box No. 60, District-Bilaspur-495006 (Chhattisgarh) (hereinafter referred to as the Government company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf.

Now, therefore, in exercise of the power conferred by sub-section (1) of section 11 of the said Act, the Central Government hereby directs that the surface rights of 87.646 hectares (approximately) or 216.57 acres (approximately) in or over the said land so vested shall, with effect from the 3rd November, 2012, instead of continuing to so vest in the Central Government, vest in the Government company, subject to the following terms and conditions, namely:—

- (1) the Government company shall reimburse to the Central Government all payments made in respect of compensation, interest, damages and the like, as determined under the provisions of the said Act;
- (2) a Tribunal shall be constituted under section 14 of the said Act for the purpose of determining the amounts payable to the Central Government by the

Government company under condition (1), and all expenditure incurred in connection with any such Tribunal and persons appointed to assist the said Tribunal, shall be borne by the Government company and similarly, all expenditure incurred in respect of all legal proceedings like appeals, etc., for or in connection with the rights in or over the said land so vested, shall also be borne by the Government company;

- (3) the Government company shall indemnify the Central Government or its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials, regarding the rights in or over the said land so vested;
- (4) the Government company shall have no power to transfer the said land to any other person without the prior approval of the Central Government; and
- (5) the Government company shall abide by such directions and conditions as may be given or imposed by the Central Government for particularly areas of the said land, as and when necessary.

[F.No. 43015/06/2011-PRIW-I]

V. S. RANA, Under Secy.

पेट्रोलियम एवं प्राकृतिक गैस मंत्रालय

नई दिल्ली, 5 जुलाई 2013

कानून 1293.—केन्द्रीय सरकार, पेट्रोलियम एवं खनिज पाइपलाइन्स (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50), की धारा 2 के खण्ड (क) के अनुसरण में दिनांक 20 सितम्बर, 2011 को भारत के राजपत्र में प्रकाशित, भारत सरकार के पेट्रोलियम एवं प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या कानून 2102 (अ) दिनांक 19 सितम्बर, 2011 में निम्नलिखित रूप से संशोधन करती है अर्थात्—

उक्त अधिसूचना की अनुसूची के स्थान 1 में श्री दिलीप कुमार अग्रवाल, डिप्टी कलेक्टर, सक्षम प्राधिकारी, इंडियन ऑयल कॉर्पोरेशन लिमिटेड, पारादीप, सम्बलपुर, रायपुर, रांची पाइपलाइन परियोजना, ए-13, सेक्टर-1, अर्वति विहार, रायपुर-492006 (छत्तीसगढ़) शब्द के स्थान पर श्री दिलीप कुमार अग्रवाल, डिप्टी कलेक्टर, सक्षम प्राधिकारी, इंडियन ऑयल कॉर्पोरेशन लिमिटेड, पारादीप, सम्बलपुर, रायपुर, रांची, पाइपलाइन परियोजना, आईबीपी डिवीजन ऑफिस, गोपालपुर, पोस्ट-जमनीपाली, कोरबा-495450 (छत्तीसगढ़) शब्द रखे जाएंगे।

यह अधिसूचना जारी होने की तारीख से लगू होगी।

[सं आर-25011/12/2010-ओआर-I]

पवन कुमार, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 5th July, 2013

S.O. 1293.—In pursuance of, Clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby makes the following amendments in the notification of the Government of India, in the Ministry of Petroleum and Natural Gas, S.O. No. 2102 (E) dated 19.9.2011, published in Gazette of India on 20.9.2011, namely:—

In the said notification, in the schedule, in column 1, for the words "Shri Dilip Kumar Agarwal, Deputy Collector, Competent Authority, Indian Oil Corporation Limited, Paradip-Sambalpur-Raipur-Ranchi Pipeline Project, A-13, Sector-1, Avanti Vihar, Raipur-492006 (Chhattisgarh)" the words "Shri Dilip Kumar Agarwal, Deputy Collector, Competent Authority, Indian Oil Corporation Limited, Paradip-Sambalpur-Raipur-Ranchi Pipeline Project IBP Division office, Gopalpur, PO: Jaminipali, Korba-495450 (Chhattisgarh)" shall be substituted.

This notification is applicable from the date of issue.

[No. R-25011/12/2010/OR-I]
PAWAN KUMAR, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 7 जून, 2013

कानून 1294.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार विजया बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय बांलोर के पंचाट (संदर्भ संख्या सीआर नं 07/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 22-5-2013 को प्राप्त हुआ था।

[सं एल 12011/70/2012-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 7th June, 2013

S.O. 1294.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1949), the Central Government hereby publishes the Award (C.R. No. 07/2013) of the Central Government Industrial Tribunal/Labour Court, BANGALORE now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of VIJAYA BANK and their workman, which was received by the Central Government on 22-05-2013.

[No. L-12011/70/2012-IR (B-II)]
SHEESH RAM, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE**

DATED : 16th May, 2013

Present : Shri S.N. NAVALGUND, Presiding Officer

C.R. No. 07/2013**I Party**

Sri S. S. Shetty,
Regional Office, Vijaya Bank
Workers Organisation, Hubli

Regional Committee, 122, 1st
Floor, Srinath Complex, New
Cotton Market, Hubli.

II Party

1. The Dy. Gen. Mgr.
(PA & PD)
Vijaya Bank,
Personnel Dept,
41/2, M.G Road,
B'llore-1.

2. The Asst. Gen.
Manager, Vijaya
Bank, Reg. Office,
Laimington Road,
Hubli-20.

APPEARANCES

I Party : Nil

II Party : Shri Shyam Sunder Shetty
Legal Assistant

AWARD

1. The Central Government vide order No. L-12011/70/2012-IR (B-II) dated 07.02.2013 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) made this reference for adjudication with the following schedule:—

SCHEDULE

"Whether the action of the management of Vijaya Bank in withdrawing the practice of advance salary disbursal during festival season is correct and justified? or amounts to violation of section 9A of the Industrial Disputes Act, 1947? What relief the concerned union is entitled to?"

2. Though in the reference order itself the parties raising the dispute i.e., Sh. S.S. Shetty, Regional Office, Vijaya Bank Workers' Organisation was directed to file a statement of claim complete the relevant documents, list of reliance and witnesses with the tribunal within 15 days from the date of receipt of reference since did not respond while registering the reference in C R 07/2013 on the file of this tribunal notices were ordered to the I Party and II party. The I Party raising the dispute did not turn up and only Sh. Sham Sundar Shetty, Legal Assistant for II Party appeared on 21.03.2013 and submitted that the matter is settled between the parties and that a report will be made in

that regard by next date. Even on that day though once again notice was issued to I Party to appear and file claim statement on 01.05.2013 at Hubli Camp, he did not turn up whereas Sh. Shyam Sundar Shetty, Legal Assistant for II party appeared and produced a copy of Memorandum of Settlement dated 20.12.2012 entered between the management of Vijaya Bank and Vijaya Bank Workers' Organisation in the matter of disbursal of advance of salary to employees for National Festivals, before the lok-adalat at Central Government Industrial Tribunal-cum-Labour Court, Chennai and requested to close the matter. Since in a similar reference to Central Government Industrial Tribunal-cum-Labour Court, Chennai the management having entered into a settlement with representatives of the workers organisation to restore the practice of advance salary disbursal for the three National Festivals in a calendar year namely Diwali, Ramzan and Christmas seven days in advance, it appears that the I Party in this reference is satisfied with the said settlement and has not come forward to pursue this reference. Accordingly, I pass the following Order:

ORDER

The reference is rejected in view of the settlement of the similar dispute between Lok-Adalat held by Central Government Industrial Tribunal-cum-Labour Court, Chennai on 20.12.2012 in I. D. No. 33/2012 on its file.

(Dictated to U.D.C. transcribed by him, corrected and signed by me on 16th May, 2013)

S. N. NAVALGUND, Presiding Officer

नई दिल्ली, 10 जून, 2013

का अप 1295.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार फैजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/53/03) को प्रकाशित करती है जो केन्द्रीय सरकार को 8-5-2013 को प्राप्त हुआ था।

[सं एल-12012/177/2002-आईआर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 10th June, 2013

S.O. 1295.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (CGIT/LC/R/No. 53/03) of the Central Government Industrial Tribunal/ Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of PUNJAB NATIONAL BANK and their workman, which was received by the Central Government on 08.05.2013.

[No. L-12012/177/2002-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

No. CGIT/LC/R/53/03

Presiding Officer : SHRI R.B. PATLE

Shri Shankar Singh Thakur,
C/o Shri Munna Singh Thakur,
House No. 571/1, Narayan Nagar,
B.T.Bangla, Garha, Jabalpur

...Workman

Versus

The Senior Regional Manager,
Punjab National Bank,
Regional office,
1227, Napier town,
Jabalpur

...Management

AWARD

Passed on this 8th day of May 2013

As per letter dated 28-2-2013 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/177/2002-IR(B-II). The dispute under reference relates to:

"Whether the action of the management of Punjab National Bank in terminating the services of Shri Shankar Singh Thakur w.e.f. 6-8-99 vide their order dated 14-9-00 is legal and justified? If not what relief the concerned workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 2/1 to 2/8. The case of 1st party workman is that his services were terminated by way of punishment as per order dated 6-10-2000 as per report in the enquiry.

That at the time of termination of the services, he was working as clerk cum cashier, Nagpur Road Branch, Jabalpur of the Bank. That he had completed 24 years of service. He was suspended from 16-5-98 for commission of alleged irregularities as per the letter dated 16-5-98, subsistence allowance was payable in terms of bipartite settlement. On completion of one year of suspension, he was entitled to subsistence allowance equal to full salary. That he was not paid subsistence allowance as per rules, only half salary was paid to him after, one year of his suspension. The said period comes to 17 months.

3. That FIR was registered by the Non-applicant against him and co-applicant at Madanmahal Police Station, Jabalpur for the same set of allegation on 17-5-98. That police had investigated into the matter, statements of several employees and officers including both accused were recorded, inspected the relevant record and found

that no offence of alleged nature was committed. The police did not proceed further in the matter. That after lapse of 15 months of his suspension, chargesheet containing those charges were issued to him. Charges in chargesheet and FIR were identical. The charges relates to (i) That workman committed fraud by crediting 4 credit entries in Saving Bank A/C 11906 Om Prakash Burman without their being any corresponding voucher, the details of entries are given, (ii) That while acting as clerk-cum-cashier, 1st party workman conspired with account holder Om Prakash Burman and cooperated him in withdrawing the money and as such misused the Bank's fund (Rs.29,500), (iii) 1st party workman with intention to conceal the fraud, deposited the amount in the S.B. A/C No. 11906 — (Rs. 24,450), (iv) That the 1st party workman had issued cheque book without obtaining proper consent/authorisation from Manager to Om Prakash Burman the account holder and by that way helped him to dupe the Bank.

4. That the Departmental Enquiry was conducted against him. The Enquiry Officer held Charge no.1 as proved, charge No. 2 — not proved from evidence. The Disciplinary Authority terminated his services vide order dated 6-10-2000 i.e. by compulsory retirement for alleged gross misconduct. He had preferred appeal challenging said order. The decision was awaited. 1st party workman submits that the finding of Enquiry Officer on Charge No.1 is perverse. That evidence was not properly recorded in the enquiry.

5. 1st party workman further refers to the observations of the Enquiry Officer. The attending circumstances was that the chargesheet was issued after 15 months of suspension, whole subsistence allowance was not paid, he was paid half salary for the period of about 17 months. It is further submitted that he had explained conduct in reasonable manner and prays for setting aside order of his termination. He also prays for reinstatement of his services with all consequential benefits.

6. 2nd party management has filed exhaustive Written Statement at page 5/1 to 5/16. It is not disputed that 1st party workman was employed as clerk cum cashier in the Bank. Chargesheet No. 478 was issued to him on 6-8-99 for committing fraud by crediting false credit entry etc. That A/C No. 11906 in ledger No.17 was opened on 8-9-89 in the name of Shri Om Prakash Burman. The Account Holder was introduced by A/C Holder no. 3255 Shri Mahesh Kumar. That while workman was working in Bank, he had shown credit of Rs. 25,000 on 16-2-98, Rs. 12,500 on 23-12-97, Rs. 14,500 & Rs. 5000 on 24-12-97, total Amount Rs. 57,500 without verifying corresponding vouchers. The details of deposits and withdrawals in this Account on different dates are given. It is submitted that the enquiry was conducted properly. That the workman was given full opportunity for his defence. He had participated in the

Departmental Enquiry. The details of the evidence recorded in Enquiry Proceeding is given in the Written Statement. Two witnesses produced by management were cross-examined. That workman expressed that he doesnot want to file any documents or to led any, evidence in defence. Having considered the entire facts and looking to the seriousness of misconduct committed by workman, the punishment of compulsory retirement was imposed against workman. The IIInd party management has referred to ratio held in different cases and submits that the punishment imposed against workman doesnot call for interference. The relief prayed by workman be rejected.

7. Additional Written Statement filed by IIInd party at Page 19/1 to 19/3. After the reference was corrected that the services of 1st party were terminated by compulsory retirement. The earlier contention in Written Statement filed by IIInd party are reiterated in the Additional Written Statement. It is rather submitted that in departmental enquiry, management produced two witnesses Shri M.S.Chawla, Sr. Manager and Shri R.K.Shrivastava, Officer Tendukhera Branch. The details pertaining to charge No. 1 to 4 are reproduced . The findings of Enquiry Officer are reproduced. IIInd party management prayed for rejection of claim of 1st party workman.

8. 1st party workman filed rejoinder at Page 7/1 to 7/8 with amendment. It is emphasized that punishment of compulsory retirement against 1st party workman is no proper. It is inconsistent with Sastry Award, Desai Award. Subsistence allowance not paid. Police had not prosecuted workman even after registering FIR under 409, 420, 467, 468, 477 A R/1 S.120 B. IPC. That Clause 19.4 of Sastry Award was violated by not paying full salary as subsistence allowance during suspension period. It is contented that the enquiry is vitiated. That punishment imposed against him is not as per clause 19.4 of Sastri Award. The probabilities were not taken into consideration while imposing the penalty.

9. My learned predecessor has already decided preliminary issue as to the legality of enquiry was properly conducted following the principles of natural justice that Enquiry is legal and proper. It appears that other issues were not framed in the matter. However the evidence of parties have been adduced.

10. Considering pleadings on record, other issues which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

| | |
|--|---------------------------------------|
| (i) Whether the finding of Enquiry Officer on Charge No. 1 is proper? | In Affirmative |
| (ii) Whether the punishment of compulsory retirement imposed by Disciplinary Authority is legal? | In Affirmative |
| (iii) If so, to what relief the workman is entitled to?" | Relief prayed by workman is rejected. |

REASONS

11. As discussed above, enquiry held against workman is found legal and proper, the question arises whether charges alleged against workman are proved from Enquiry proceedings.

12. 1st party workman filed affidavit of his evidence on 25-7-07 before legality of the enquiry proceeding was decided. 1st party workman was cross-examined. Documents produced by 1st party workman Exhibit W-1 is order of his compulsory retirement. Exhibit W-2 is letter given by Disciplinary Authority. For payment of subsistence allowance as per Bipartite Settlement. Exhibit W-3 is copy of FIR. FIR clearly refers to the entries taken in Account No. 11906 of one Shri Om Prakash Burman, deposit and withdrawal of amount etc. Exhibit W-4 is copy of chargesheet. Exhibit W-5 is letter accompanied with chargesheet. The report of Enquiry Officer is produced on record. Record of Enquiry Proceeding is also produced. The statements of management's witnesses Mr. Chawla and Shri R.K. Shrivastava given details in context of the documents produced and the working procedure in the bank. The amount deposited in account of Shri Om Prakash Burman without any vouchers, defence in cross-examination of witness Shri Shrivastava was that the 1st party had taken entries in the Account No. 11906 as per directions given by Shri Santosh Shrivastava. As pointed out by learned counsel for management Mr. Shashi, said Santosh Shrivastava is not examined by workman. Thus the witness of 1st party workman is not substantiated that he has taken entries of Shri Santosh Shrivastava as in usual course in the Bank. The Tribunal cannot act as Appellate Court and re-appreciate the evidence recorded in the enquiry proceeding. Consequently the question is whether the finding of Enquiry Officer are supported by evidence or without evidence and as such perverse. Considering the statement of management's witness Shri Chawla and Shri R.K.Shrivastava and the relevant documents produced, it cannot be said that the findings of the enquiry Officer are without supporting evidence.

13. Learned counsel for 1st party workman submitted detailed note of argument. It is emphasized that punishment imposed against workman is not consistent with the clause 19(4) of the Bipartite Settlement. It is reproduced at Page 4 of the note of argument. It provides it shall be open for the management to proceed against the employee under the provisions set out below in sub paragraphs 19.11 and 19.12 infra relating to discharge, but he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full wages and allowances and to all other privileges for such period. In the event of the management deciding, after enquiry, not to continue him in service, he shall be liable only for termination with three months pay and allowances in lieu of notice as provided in clause 19.3 supra. Thus as per above clause of the Bipartite

settlement, for suspension period, full salary and allowance are required to be paid. As per evidence and submissions, workman was under suspension for 17 months. The punishment as per above clause would have been imposed. For termination of his services, the management was required to pay 3 months salary in lieu of notice.

14. Ultimately the punishment as per, clause 19(4) is not imposed for proved misconduct as per charge No. 1. The punishment of compulsory retirement has been imposed. Considering past service record of delinquent employee and members of his family, it is reiterated that the punishment is not as per the Bipartite settlement, instead punishment of compulsory retirement has been illegally imposed. The compulsory retirement contemplates retiring benefits including pay etc. Workman is retiring on 6-10-2000. He must be getting pensionary benefits and other allowance. The punishment as per bipartite settlement would have been imposed. He would have been entitled to full salary instead of half salary and allowances for 17 months and notice pay for 3 months. The punishment as per clause 19.4 would have denied the 1st party workman from getting pensionary benefits . Thus such punishment would have been harsh.

15. Learned counsel for workman has emphasized that intention to commit fraud is not established, the punishment of compulsory retirement was not justified. Some other punishment like reduction to lower scale could have been imposed. It is also emphasized that showcause notice was issued for imposing punishment of dismissal from service and considering the service antecedents, punishment of compulsory retirement was imposed. Proceeding with such analogy, counsel for workman submits notes of arguments that as per clause 19 (4) of settlement, 3 months notice pay was required to be paid in lieu of notice at the time of termination of the services of the workman. Considering the service record of the workman, other punishment like reduction in pay could have been imposed.

16. Learned counsel for 1st party workman has placed reliance in case of Shri Kuldeep Singh Versus The Commissioner of Police and others reported in AIR 99 SC 677 by Hon'ble Supreme Court on 17-12-98. The facts of the said case are not comparable in the said case. The constable of Delhi Police was dismissed after departmental enquiry. The findings are recorded in domestic enquiry. They are characterized as perverse. The evidence in departmental enquiry against workman of management's witness Shri Chawla and Shri R.K.Shrivastava have shown details how the amount was credited in the account of Shri Om Prakash Burman holder of A/C No. 11906, how the said amount was withdrawn. The ratio cannot be applied to the present case at hand when 1st party has failed to substantiate his claim by not examining Shri Santosh Shrivastava.

17. Learned counsel also cited judgment in Case of Shri B.C.Chaturvedi Versus Union of India and others by Supreme Court delivered on 1-11-96. Their Lordship observed that when an enquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of act or evidence is defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge."

Legal position by the Lordship cannot be disputed. However it cannot be beneficially applied to the present case at hand when findings of Enquiry Officer are supported by evidence of Shri Chawla and Shri R.K.Shrivastava and 1st party workman failed to examine Shri Santosh Shrivastava.

Learned counsel for 1st party workman also pointed out my attention to judgment in case of Shrii Krishan versus the Kurukshetra University, judgment dated 17- 11-1975 by Supreme Court . My attention was drawn to the observation that if neither the Head of the Department took care to scrutinize the admission form, then the question of the appellant committing a fraud is in a position to discover the truth by fraud is committed is in a position to discover the truth by due diligence, fraud is not proved. It was neither a case of suggestion, falsi nor of suppressioveri. The appellant never wrote to the University authorities that he had attended the prescribed number of lectures.

The facts of the present case are not comparable with facts of the case at hand. The evidence of Shri R.K. Shrivastava is clear about the amount deposited in A/C No. 11906 held by Shri Omprakash Burman without any voucher. The said amount was withdrawn by Shri Omprakash Burman without passbook and amount was deposited without vouchers. The evidence of management's witness in enquiry needs no re-appreciation. Observations made by the Lordship cannot be applied to the present case at hand as its facts are not comparable.

18. Attention was also pointed out to judgment of case of—

Degala Suryanarayana versus Bank of India decided by Hon'ble Supreme Court on 12-7-99. My attention was pointed out to observations made by Lordship that strict rules of evidence are

not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings.

The statements of Shri Chawla and Shri R.K.Shrivastava recorded in Departmental Enquiry were subjected to cross-examination by co-worker. The findings of Enquiry Officer on Issue No.1 cannot be said based on conjunction.

19. Learned counsel for IIInd party Mr. Shashi relies on ratio held in case of Shri N.P.Mehta Versus State of Gujarat in 2011-LAB.I.C.173. The facts of the above cited case and the case at hand are not comparable as petitioner in above cited case was judicial officer and his services were terminated under Rule 10(4)(a)(I) & (II) of the Gujarat civil services (Pension) Rules 2002 in public interest. The ratio cannot be applied to the present case at hand.

20. Next reliance is placed in ratio held in-

case of State of Tamil Nadu versus Thiru K.V. Perumal in 1996-5-Supreme court Cases 474. Their Lordship held in judicial review in departmental enquiry, the question as to whether the charges were established on the material available, held , beyond the scope of judicial review as the Administrative Tribunal is not an appellate authority.

The above cited case relates to the power of Administrative Tribunals under Section 14 & 15 of the said Act and not powers of the Industrial Tribunal under Section 11-A of I.D. Act. therefore the ratio cannot be beneficially applied to the present case.

21. So far as submissions by learned counsel for workman Shri Manish Reja that as per clause 19(4) of the Bipartite Settlement punishment was not imposed, learned counsel relies on ratio held in-

State Bank of India Versus Central Govt. Industrial Tribunal-cum-Labour Court and another reported in Case No. 1996- M.P.K.J. 560. Their Lordship dealing with scope of Section 11 and 521 (10)(C) of Sastry Award held submissions of employee that he made entries under belief that pass book was unused and of closed account only to demonstrate to a person how entries are made in a pass book. The finding of Enquiry Officer showing that there was no ulterior motive on part of delinquent in making entries and that Bank had

not suffered any financial loss due to act of employee. Disciplinary Authority did not consider the extenuating circumstances as also the requirements of Sastry Award regarding punishment Tribunal under Section 11-A has wide discretion in the matter of substituting punishment. Punishment altered from discharge from service to stopping of two increments and directed reinstatement with back wages and directed reinstatement with back wages.

The evidence in the enquiry proceeding shows that deposit of Rs. 57,000 was made by 1st party workman in A/ C No. 11906 held by Shri Omprakash Burman, amount of Rs. 24,500 was withdrawn from the said amount, further amount of Rs. 24,500 were deposited were shown without verifying any vouchers by workman at different dates and the amount was withdrawn by the account holder at different dates. Considering the evidence in my considered view, the ratio in above case cannot be applied to the present case at hand. The punishment of compulsory retirement after considering the service record and in my considered view, the punishment of compulsory retirement cannot be said improper or exonerated. For above reasons, I record my finding on Point No. 1 & 2 in Affirmative.

22. In the result, award is passed as under:-

- (1) The action of the management of Punjab National Bank in terminating the services of Shri Shankar Singh Thakur w.e.f. 6-8-99 vide their order dated 14-9-00 is legal.
- (2) 1st party workman is not entitled to relief prayed by him."

R. B. PATLE, Presiding Officer

नई दिल्ली, 10 जून, 2013

काआरप 1296.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की अध्या 17 के अनुसरण में केन्द्रीय सरकार यूनिट के प्रबंधनत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या सी-जी-आईटी/एल-सी/आर-28/2000) को प्रकाशित करती है जो केन्द्रीय सरकार को 22-5-2013 को प्राप्त हुआ था।

[सं. एल-12012/234/99-आई आर (बी II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 10th June, 2013

S.O. 1296.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (No. CGIT/LC/R/28/2000) of the Central Government Industrial Tribunal/

Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of UCO BANK and their workman, which was received by the Central Government on 22.05.2013.

[No. L-12012/234/99-IR (B-II)]
SHESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/28/2000

Presiding Officer: SHRI R.B.PATLE

Shri Anandkumar Dhupare,
S/o B.Dhupare, R/o Maya Apptt.,
Plot No. 363, F-1,
Sarvadharma Colony,
Bhopal (MP)Workman

Versus

The Managing Director,
UCO Bank, Head Office,
12, Old Court House Street,
CalcuttaManagement

AWARD

Passed on this 22nd day of March 2013

1. As per letter dated 14-1-2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D.Act, 1947 as per Notification No. L-12012/234/99-IR(B-II). The dispute under reference relates to:

"Whether the action of the management of UCO Bank in terminating the services of Shri Anandkumar Dhupare, S/o Baburao Dhupare w.e.f. 10-5-97 is justified? If not, to what relief the workman is entitled for?"

2. After receipt of reference, notices were issued to the parties. 1st party workman submitted his statement of claim at page 2/1 to 2/5. The case of 1st party workman is that he was appointed as peon by IIInd party on 29-9-87. Since his appointment, he was continuously working till 10-5-97 honestly and with full devotion. That he was working for several years on the vacant post of peon and acquired eligibility for said post. He further contended that though he was appointed as peon, appointment order was not given to him, he was paid wages Rs. 15 per day. The wages were enhanced from time to time upto Rs. 60 per day. That he had not received adverse communication about his service. He was assured for appointment for the regular post of peon.

3. That there was agreement between management of IIInd party and the Union dated 12-10-89 governing services of the employees. The said agreement was with management and the Union. For implementation of the said agreement, notice was issued on 19-10-89. Dy. General Manager had also issued circular dated 31-3-90 for implementation of earlier circular. That information was called from Non-applicant No.3 with respect to daily wage casual employees. The Non-applicant No.3 had submitted such information under letter dated 1-2-94. 1st party workman claims that his name was included in said letter as he was working on vacant post of peon for 11 years. However services of 1st party workman were not regularized. It is submitted that services of 1st party workman was terminated in 1997. He was not paid retrenchment compensation. No notice was issued. According to the workman, he had completed 240 days continuous service. He was not given benefit of permanent employee as per agreement with the Union. The Writ Petition No. 3008/97 was filed by Union. Hon'ble High Court had issued direction for availing remedy under I.D. Act. 1st party workman submits that termination from services is in violation Section 25-F. 1st party workman prays for his reinstatement with consequential benefits.

4. IIInd party submitted Written Statement at Page 5/1 to 5/5 denying claim of 1st party workman. It is submitted that the applicant workman was engaged by the then Branch Manager dehors the recruitment rules and procedure of Bank. Any vacant post of subordinate staff is not available. The engagement of 1st party workman was due to extreme exigency of work purely on casual basis on daily wages. It is denied that 1st party workman was working with sincerity and devotion. 1st party workman being casual labour engaged due to extreme exigency is not entitled to regularization. It is denied that termination of services of workman is illegal.

5. IIInd party further submits that in circular dated 19-10-89 it is admitted where mandatory guidelines were provided for drawing a panel of daily wager engaged dehors the recruitment rules for their continuity of service. Absorption and regularization subject to the availability of posts and vacancies in subordinate cadre. It is contended that 1st party has never worked against the vacant post. 1st party did not apply to the competent authority in prescribed manner before 30-11-89 as per directions in Circular dated 19-10-89 dealing with procedure for absorption and empanelment of daily wages. Applicant deliberately decided himself not to be empanelled and absorbed legality only with view to file complaints in High Court and this Tribunal. It is contended that the applicant/ workman was paid his remuneration and dues as daily wager according to the prevailing rules of the Bank. His claim is not tenable. It is further submitted that maintenance of muster roll and service roll is not essential and engagement and disengagement of daily wagers. That applicant was

not holding any post, he had not vested right. That 1st party workman has not represented to the higher authorities immediately instead remained silent for issue. There is no retrenchment of daily wage employees. Junior employees are not engaged. Names of the junior employees are not given. IIInd party could not give clear reply about it. IIInd party further submitted that in W.P.No. 1339/98, order is passed by Hon'ble Calcutta High Court on 24-8-99. It is submitted that the claim of 1st party is not tenable and the same be rejected.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

| | | |
|------|---|---|
| (i) | Whether the action of the management of UCO Bank in terminating the services of Shri Anandkumar Dhupare, S/o Baburao Dhupare w.e.f. 10-5-97 is legal? | In Negative |
| (ii) | If not, what relief the workman is entitled to?" | 1st party workman is entitled to compensation with other benefits as per final order. |

REASONS

7. Though the dispute under reference relates to legality of termination of 1st party workman w.e.f. 10-5-97. In his statement of claim, 1st party workman has pleaded about the agreement between Union and the management dated 12-10-89. He claims that he had submitted application as per circular dated 19-10-89 & 31-3-90. His name was appearing in the information submitted by Non-applicant No.3. Thus pleadings of 1st party workman are beyond scope of reference made by Central Govt. The pleadings and evidence in that regard therefore needs no consideration.

8. On the point of legality of his termination, 1st party workman in his affidavit of evidence has stated that he was appointed as peon at Habibganj Branch, Bhopal from 29-9-87. He continuously worked in 10-5-97. Initially he was paid wages Rs. 15 per day. The wages were enhanced to Rs.60 per day. That he had worked for around 9 years with IIInd party. Surprisingly his services were terminated without notice, not paying retrenchment compensation. In his affidavit of evidence, he has stated that employees junior to him Ramasahare appointed on 14-1-89 at Habibganj Bhopal, R.Kumar appointed on 14-2-89 at Dabra, P.K.Jagtap appointed on 1-3-89 at Ujjain were in service. He is terminated illegally. In his cross-examination, 1st party workman says that he was not given appointment letter by the Branch Manager Shri S.P.Surana. His name was not

sent by the Employment Exchange for appointment. He was serving drinking water, sweeping and other works as per the directions. He was paid weekly wages. He was not getting holidays. Wages paid to him were less than the collector's rate. He claims ignorance what was the rate of daily wages of Collector rate. In his cross-examination, 1st party workman says there are rules of recruitment in the Bank. On 22-10-89, there was agreement between the Union and Bank Exhibit P-1. He has submitted application for empanelment in 1989. List of employees working in the Bank is produced as Exhibit P-4. On careful perusal of record, I do not find those documents bearing Exhibit P-1, P-4 on record.

9. The evidence of management's witness Shri B.B.Nand submitted on affidavit. He has stated in his affidavit that 1st party workman was not appointed as per recruitment rules. 1st party workman had not completed 240 days continuous working preceding his termination. That the Bank is nationalized and provisions of Employment Exchange Act, 1956 notification of vacancy and consideration of persons recommended by Employment Exchange are binding on the Bank. That Bank is not required to maintain any Muster roll or salary bill or assessment of performance of casual daily wagers. The management's witness further states that the engagement of 1st party ended on the day. The payment was made under voucher on No Work No Pay with no holiday, no sick leave, no disciplinary control and master servant relationship between the 1st and the IIInd party. It was purely contract for service for routine. In his affidavit, management's witness further states that due to awareness of his engagement dehors the rules of the Bank and by Manager not empowered to make any appointment. The applicant during his engagement did not make any representation either for regularization or for equal pay for equal work. In his cross-examination, management's witness says that he was working at Habibganj from 30-12-97 to 2-5-02 as Asstt. Manager (Advance and Estt). While he was working in said branch, workman was not working. He further says that 1st party was casual daily wager, no educational qualifications are prescribed for casual daily wagers. He was unable to say about qualification of 1st party workman. He had denied suggestion that 1st party was doing work of making bundles of note. That 1st party was sent to the Federation of Tilhan for collecting cheque for sending telegram to RBI. He claims ignorance whether one Ramkumar was working on daily wager. In evidence of management's witness is believed, it is clear that no record was maintained about the working days of 1st party workman. There is no basis to accept evidence of the management's witness about working days of the workman. The evidence of 1st party and management's witness is on oath against oath.

10. Learned counsel for management Shri Bhattacharjee on the point relies on ratio held in-

"Surendranagar District Panchayat Versus Dahyabhai Amarsingh in 2006 (Supreme Court Cases)(L&S) 38. Their Lordship of Apex Court dealing with requirement of 240 days continuous service- onus to prove held burden of proof lies on the workman. It is for workman to adduce evidence apart from examining himself or filing affidavit to prove the said factum, such evidence may be in form of receipt of salary or wages for 240 days or record of the appointment or engagement for that year to show that he had worked with the employer for 240 days or examination of a co-worker."

"In case of Karur Vysya Bank Employees Union, Bangalore vrs. Presiding Officer, CGIT, Bangalore and another reported in 1988 LAB.I.C.1746 held failure of employee to prove that he worked for 240 days continuous days in a year- provisions of Section 25-F of I.D.Act is not attracted."

"In case of Range Forest Officer Versus S.T. Hadimani in 2002 Supreme Court Cases (L&S) 367. Their Lordship of Apex Court dealing with ownus and manner of proof held whether the workman's claim that he had worked for more than 240 days in the year preceding his termination was denied by the employer, it was for the claimant to lead evidence to that effect. It was further held that workman's evidence was not sufficient evidence for that purpose."

11. In present case though 1st party workman filed affidavit of co-worker Shri Abhitab Chatterjee. The said witness was not produced for his cross-examination. Therefore the arguments advanced by Shri Bhattacharjee for management that his evidence cannot be relied upon needs to be accepted. Besides evidence of workman and witness of management, the record shows that 1st party workman had submitted application on 3-12-2001 requesting management of IIInd party to produce entire service record of 1st party as well as record of payment made to the applicant during his tenure. Though copy was received, documents are not produced. Management's witness says that no record is maintained. The wages were paid under vouchers even vouchers are not produced by management. Under such circumstances, question arises whether the workman has completed 240 days continuous service preceding his termination. When management has not produced record, in my considered view the evidence of workman deserves to be accepted. The facts of the cases relied by counsel for management are little different. It appears that no application for calling documents by the workman was submitted in these cases therefore ratio in

above cited cases cannot be applied to the present case at hand.

12. From evidence of workman and management's witness, it is clear that services of the workman are terminated without notice. The retrenchment compensation was not paid. 1st party had worked with IIInd party for about 9 years. He is entitled to retrenchment compensation, 15 days wages for every completed year service. As such workman would be entitled to retrenchment compensation for 135 days, one months wages in lieu of notice. 1st party workman had worked for about 9 years with the Bank but he was not appointed following recruitment rules. Therefore workman will not be entitled to reinstatement instead the payment of compensation would be appropriate. Considering the facts of the case, in my considered view, compensation of Rs. 1,50,000/- would be appropriate. For above reasons, I record my finding in Point No. 1 in Negative.

13. Point No.2- 1st party is entitled to compensation Rs.1,50,000/-, retrenchment compensation, wages of 30 days in lieu of notice and 135 days wages towards retrenchment compensation.

14. In the result, I pass award as under:-

- (1) Termination of services of 1st party workman Shri Anand Kumar Dhupare by management is illegal.
- (2) IIInd party is directed to pay compensation Rs. 1,50,000/- and wages of 30 days in lieu of notice and 135 days wages towards retrenchment compensation.

Amount as per above order be calculated at the rate of last wages paid to the 1st party. Amount as per above order be paid to the workman within 30 days from the date of order. In case of default, amount carry interest @ 9 % per annum from the date of award till realization of amount.

R. B. PATLE, Presiding Officer

नई दिल्ली, 11 जून, 2013

कां अ१ 1297.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलएसी/आर/197/91 को प्रकाशित करती है जो केन्द्रीय सरकार को 22-5-2013 को प्राप्त हुआ था।

[सं एल-12012/202/91-आईआर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 11th June, 2013

S.O. 1297.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (CGIT/LC/R/No. 197/91) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 22.05.2013.

[No. L-12012/202/91-IR (B-II)]
SHEESH RAM, Section Officer

**ANNEXURE
BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR
NO. CGIT/LC/R/197/91**

PRESIDING OFFICER: SHRIR.B.PATLE

Assistant General Secretary,
Punjab National bank Employees Association,
Sarafa Bazar, Lashkar,
Gwalior

... Workman/Union

Versus

The Regional Manager,
Punjab National Bank,
20, Sneh Nagar,
Indore

... Management

AWARD

Passed on this 18th day of March, 2013

As per letter dated Nil by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-12012/202/91-IR (B-II). The dispute under reference relates to:

"Whether the action of the management of Punjab National bank in terminating the services of Shri Gopal Rao Shinde is justified? If not, to what relief is the workman entitled?"

2. After notice, 1st party/workman submitted statement of claim at Page 6/1 to 6/3. As per his statement of claim, the case of 1st party is that he was appointed as full time peon in Sarafa Bazar, Laskhar, Gwalior of Punjab National Bank on 5-12-1998, he continued to work till 31-5-90. His services were terminated w.e.f. 1-6-1990 without prior notice. He was not paid retrenchment compensation as per Section 25-F of the I.D. Act. That he was working against permanent vacant post on transfer of other peon Shri Arjun Singh from Sarafa Bazar to Piparia branch. That he was deemed to be probationer and confirmed employee after completion of six months service in the bank in terms of para 495 of the Sastry Award. That he was entitled to get

full scale wages . That disregarding the provisions of the settlement at bipartite agreements, the IIInd party paid wages Rs. 10/-, 12/-, 15/- & 20/- per day to him That under clause 4.5(b) of the Bipartite settlement, on completion of 29 hours a week duty, he was entitled to full scale wages. Management did not pay him wages as per the award. His services were illegally terminated. On such grounds, 1st party prays for reinstatement with full back wages.

3. IIInd party files Written Statement at Page 7/1 to 7/3. Preliminary objection is raised that 1st party is not a workman. He was never engaged as temporary peon. 1st party was intermittently engaged for casual work for filling of water, clearing old records etc. There was no relationship of employer employee. The provisions of I.D. Act are not applicable. Para 16.9 of Desai Award deals with the service conditions of the employees. The said award is not applicable to the casual employees. The reference is wrongly made. 1st party had not completed 240 days continuous service preceding his termination. The agreed wages were paid to the 1st party when engaged for casual work. IIInd party prayed for rejection of the claim of 1st party.

4. 1st party filed rejoinder at page 9/1 to 9/4 retreating that he was engaged as temporary peon in vacant post after transfer of Shri Arjun Singh. Two other peons in the Bank were holding higher qualification. They were performing duties of clerk. That he was working as peon from 5-12-88 to 31-5-90. His wages were paid under voucher. Preliminary objection is no legal. It is contended that he has completed 240 days continuous service. His services were terminated in violation of Section 25-F of I.D. Act.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|--|--|
| (i) Whether termination of services of 1st party/ workman Shri Gopal Rao Shinde w.e.f. 1-6-90 is just and legal? | In Negative |
| (ii) If not, what relief the workman is entitled to?" | IIInd party shall pay compensation Rs.40,000/-, notice pay and retrenchment compensation as per final order. |

REASONS

6. 1st party/workman is challenging his termination from 1-6-90. He is claiming that he was appointed as peon on vacant post on transfer of Shri Arjun Singh. That as per the Bipartite Agreement and Desai Award he had acquired status of regular peon but he was not paid wages salary of regular scale. The IIInd party/management denied all the above contentions of 1st party. Affidavit of evidence is

filed by 1st at page No. 21 He has stated that he was working in bank from 5-12-88 to 31-5-90. His services were terminated without notice or paying retrenchment compensation. He had completed 409 days working. In his cross-examination, 1st party says that he was given appointment letter as peon but he claims ignorance about said document is produced on record. He denies that he was engaged as casual labour. He was paid wages Rs.300/- per month. He denies suggestion that he had worked for 84 days in 1989. He retreats that he had continuously worked for more than 240 days. He was paid wages under voucher. He denies suggestion that he was not appointed as regular employee, wages of regular employee were not paid to him.

7. Management filed affidavit of their witness Shri Anil Kumar Agrawal at Page 24/1 to 24/2. Management witness states that workman had not completed 240 days working during 12 months preceding the date of termination of 1st party. That provisions of Sastry Award are not attracted. In his cross-examination, management witness says that he was not working in Sarafa Bazar branch Gwalior of IInd party, he was not knowing Branch Manager Shri Ashok Sharma. That retrenchment compensation was not paid.

8. 1st party/workman had filed application requesting IInd party to produce documents (1) dispatch register of Sarafa Bazar, Lashkar branch, (2) peon book of said period, (3) Punjab National bank Form No. 186, (4) list of cheques etc. under application dated 7-6-95. The application was opposed but those documents are not produced by IInd party. Although documents are relevant for deciding whether the 1st party workman had completed 240 days working during 12 calendar months preceding his termination. The Bank has not produced those documents. Therefore the contentions of IInd party that 240 days working was not completed by 1st party cannot be accepted. Despite of the pleadings on both side that the services of employees under IInd party Bank are covered by Sastry Award, the said award is not produced for perusal. In view of termination of services, the contentions of 1st party about his services as regular employee cannot be accepted. His pleadings are clear that he was paid wages Rs. 10 to 20/- per day, he was not paid regular salary of peon prior to his termination from service.

9. From evidence on record, it is clear that retrenchment compensation was not paid, one months notice was not issued to the 1st party. As such the provisions of Section 25-F were not complied with. The learned counsel for IInd party Mr. Shashi relies on—"Ratio held in Case of Himanshu Kumar Vidyarthi Vrs. State of Bihar in AIR 1997 Supreme Court Cases 3657. Their Lordship dealing with Section 25-F Schedule 2, Item 3 of ID Act—Daily wage employees appointed on basis of need the basis of ned of work termination of their services cannot be construed to the retrenchment. In above said case,

termination was challenged filing Writ petition in High Court and not by way of filing an industrial dispute."

The evidence was not adduced as in the present case, therefore ratio held in above cited case cannot be beneficially applied to present case. Reliance was also placed on —

"Ratio held in Case of State of Himachal Pradesh Vrs. Suresh Kumar Verma in 1996-(2) SLR -321. Their Lordship held the appointment on daily wages cannot be a conduit pipe for regular appointments which would be a back door entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption. It is equally settled law that even for Class IV employees recruitment according to rules is a pre condition. Only work charged employees who perform the duties of transitory nature are appointed not to a post but are required to perform the work of transitory and urgent nature so long as the work exists. One temporary employee cannot be replaced by another temporary employee."

Ratio held in the case does not cover consequences of violation of Section 25-F of I.D. Act. However the ratio is clear that daily wage employee cannot be reinstated.

"In case of Surendranagar District Panchayat Versus Dahyabhai Amarsingh in 2005(8) Supreme Court Cases 750. Their Lordship held that fact must be proved by workman to claim protection under Section 25-F, 25-B. In present case, the evidence adduced by 1st party about completing 240 days continuous service during 12 calendar months preceding his termination is accepted."

Therefore ratio held in above case cannot be applied to the present case.

10. As services of 1st party were terminated in violation of Section 25-F of I.D. Act, I record my finding on Point No. 1 in Negative.

11. Point No. 2—Termination of 1st party workman is illegal as per my finding on Point No. 1, the question arises is what relief is entitled ? The 1st workman had hardly worked for about 1 year 6 months as a daily wage employee. Therefore his reinstatement would not be justified. Payment of compensation Rs.40,000 would be adequate. In addition, the 1st party would be entitled to one month's wages in lieu of notice and retrenchment compensation equivalent to 15 days wages. Accordingly I record my finding on Point No.2.

12. In the result, I pass following award—

- (1) Action of IInd party terminating services of 1st party workman Shri Gopal Rao Shinde is not legal.

- (2) IIInd party/management is directed to pay compensation Rs.40,000, one months wages in lieu of notice, 15 days wages as retrenchment compensation.

The above amount shall be calculated at the rate of last wage paid to the 1st party. Amount as per above order be paid within 30 days from the date of order. In case of default, the amount shall carry 9 % interest from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 13 जून, 2013

का अंक 1298.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केंद्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसीआर-201/92) को प्रकाशित करती है जो केंद्रीय सरकार को 17/5/2013 को प्राप्त हुआ था।

[सं. एल-12012/137/89-आई आर० (बी० II)]

शीश राम, अनुभाग अधिकारी

New Delhi, The 13th June, 2013

S.O. 1298.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (CGIT/LC/R/No. 201/92) of the Central Government Industrial Tribunal/ Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 17.05.2013.

[No. L-12012/137/89-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/201/92

PRESIDING OFFICER : SHRI R.B. PATLE

Shri Ravindra Kumar Sharma,
S/o Shri Virendra Kumar Sharma,
Khedapati Colony,
Gwalior

....Workman

Versus

Regional Manager,
Central Bank of India,

Regional Office,
Jayendragarh, Gwalior

....Management

AWARD

Passed on this 15th day of May 2013

As per letter dated 29-9-92 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D.Act, 1947 as per Notification No. L -12012/137/89-D. II(A). The dispute under reference relates to:

"Whether the action of the management of Central Bank of India in terminating the services of Shri Ravinder Kumar Sharma w.e.f. 23-3-1983 is justified? If not, to what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. 1st party workman submitted his Statement of claim at Page 2/1 to 2/4 of the reference. The case of 1st party workman is that he was appointed as Farrash-cum-Daftri by the Branch Manager, Mr. Madanlal Gupta of Central Bank, Madhoganj, Lashkar, Gwalior in March 1982. He was continued till 10-3-83. His services were terminated in a written order that his performance in service was quite satisfactory. He had submitted appeal challenging order of his termination. He received reply on 13-9-85. He had initiated conciliation proceeding before ALC(C), Bhopal. Failure report was submitted to Central Government. Government had refused to make a reference. In Writ Petition No. 678/90 directions were given to the Central Govt. for making reference. In pursuance of said direction, the reference was made.

3. 1st party workman claims that he had completed 240 days continuous service prior to his termination. He was terminated in violation of Section 25-F, G of I.D. Act. In his further pleadings, he has contended that he had completed 240 days continuous service prior to his termination. He prays for setting aside the termination and reinstatement in service with full back wages.

4. IIInd party management submitted Written Statement at Page 9/1 to 9/6. The claim of 1st party workman is denied. It is submitted that the party workman was working as casual part time farrash only for 149 days during the period 24-3-82 to 23-3-83. He was not continuously working intermittently. He has completed 240 days continuous service during 12 preceding months. That Central Govt. had refused to make reference. That cognizance of the matter now by the Hon'ble Tribunal is bad and deserves to be dismissed as reference is belated.

5. On merits, IIInd party management submitted that workman had not completed 240 days continuous service, he has worked only for 149 days. He is not covered under Section 25-B of I.d. Act. Violation of Section 25-F, G of I.D. Act is denied.

6. That there is specific recruitment policy applicable to the IIInd party management. The names are invited from Employment Exchange. After detailed list is received from Employment Exchange, the capability of the candidates is assessed after interview. When Local Selection Committee applies the same incumbents are appointed on the regular posts. 1st party workman was not appointed following such procedure. IIInd party prays for rejection of the claim.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

| | |
|--|---------------------------------------|
| (i) Whether the action of the management of Central Bank of India in terminating the services of Shri Ravinder Kumar Sharma w.e.f. 23-3-1983 is justified? | In Affirmative |
| (ii) If so, to what relief the workman is entitled to?" | Relief prayed by workman is rejected. |

REASONS

8. 1st party workman filed affidavit in support of his claim. On 6-6- 95, he remained absent and failed to make available for cross- examination by IIInd party. As per order dated 11-4-08, evidence on affidavit was ordered to be not read in evidence.

9. Management of IIInd party filed affidavit of evidence on 4-9-04. However the witness remained absent for his cross-examination. The management's evidence was closed. It is clear from above that both Ist party workman as well as IIInd party management are negligent, not diligent in leading evidence, making available for cross-examination of opposite party. The evidence of workman as well as witness of IIInd party cannot be considered for deciding the matter in dispute. It leads to the conclusion that there is no legal evidence for deciding the dispute between parties. Termination of workman is not proved to be illegal and therefore action of the IIInd party management in terminating services of Ist party workman needs to be upheld. Accordingly I record my finding on Point No. 1.

10. In the result, award is passed as under:—

- (1) Action of the management of Central Bank of India in terminating the services of Shri Ravinder Kumar Sharma w.e.f. 23-3-1983 is legal.
- (2) Relief prayed by workman are rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 13 जून, 2013

का अ 1299.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुपराण में केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण/श्रम न्यायालय, नई दिल्ली के पंचाट (संदर्भ संखा 266/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 02/4/2013 को प्राप्त हुआ था।

[सं एल-12012/138/2001-आई आर (बी० II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 13th June, 2013

S.O. 1299.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 266/2011) of the Central Government Industrial Tribunal/Labour Court, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 02.04.2013.

[No. L-12012/138/2001-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI**

I.D. No. 266/2011

Shri Bijender Singh,

A-92, A.C. Nagar,

Faridabad

....Workman

Versus

The Asst. General Manager,
Syndicate Bank,
6-Bhagwan Dass Road,
Sarojini House,
New Delhi-110001

....Management

AWARD

A temporay part time sweeper, working at Faridabad branch, Syndicate Bank (in short the bank), developed intimacy with one Shri Devender Kumar working at KC Cinema, Faridabad. He represented to Shri Devender Kumar that he would get an account opened for him in Faridabad branch of the bank. On 11.07.1997, Shri Devender Kumar opened a Saving Bank account at Faridabad branch of the bank by way of deposit of Rs. 500.00. His account was

introduced by the sweeper. Thereafter, Shri Devender Kumar paid a sum of Rs. 100.00, Rs. 200.00, Rs. 250.00, Rs. 250.00, Rs. 200.00, Rs. 200.00 and Rs. 100.00 to the sweeper on 11.07.97, 14.07.97, 14.07.97, 15.07.97, 16.07.97, 17.07.97 and 19.07.97 respectively for getting the same deposited in his Saving Bank account, referred above. The sweeper did not deposit the aforesaid sums and misappropriated it. With a view to make Shri Devender Kumar believe that the aforesaid sums of money have been deposited in his account, the sweeper forged counter foils of deposit slips and handed those slips to Shri Devender Kumar projecting that the amounts have been deposited in his Saving Bank account. Later on, Shri Devender Kumar came to know that money, handed over by him to the sweeper, had not been deposited in his account. He made a complaint to the bank. Charge sheet was served on the sweeper. Domestic enquiry was conducted by the bank and punishment of dismissal from service was awarded to the sweeper vide order dated 26.07.99. Aggrieved by the said order, the sweeper raised a demand for reinstatement which demand was not conceded to. Ultimately, he raised an industrial dispute before the Conciliation Officer. Since his claim was contested by the bank, the conciliation proceedings ended into failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication vide order No.L 12012/138/2001-IR(B-II), New Delhi dated 29.11.2001 with following terms:

"Whether action of the management of Syndicate Bank in ordering dismissal from service of Shri Bijender Singh vide order dated 26.07.1999 is legal and justified? If not, what relief the concerned workman is entitled to?"

2. Claim statement was filed by the part time sweeper, namely, Shri Bijender Singh, pleading therein that he was working as part-time sweeper with the bank since 25.08.1980. However, appointment letter was issued in his favour on 07.09.1981. He served the bank sincerely and honestly. No memo or charge sheet was ever served upon him. But to his surprise, he was placed under suspension by the bank on 06.01.98. Prior to placing him under suspension, memo dated 24.07.97 was served which was replied by him on 12.09.97. He made a request to the bank that copy of charge sheet may be served upon him in Hindi. He denied the allegations levelled against him. He was asked to appear before the Enquiry Officer, without supplying relevant documents to him. Enquiry was conducted in violation of principles of natural justice. Enquiry Officer submitted his report, holding him guilty of the charges. He presents that signatures on counterfoils of pay-in-slips do not resemble his signatures. Those counterfoils were not filled in by him. Stamp of the bank used to remain under lock and key and it was beyond his reach. Under these circumstances, findings of the Enquiry Officer were perverse.

3. Claimant presents that he was a member of Syndicate Bank Employees Union. He projects that in that capacity he used to raise grievances of the other employees and as such, the bank victimised him. Order of dismissal passed by the Disciplinary Authority, does not commensurate to the alleged misconduct. According to him order of dismissal is illegal and unjustified. He claims reinstatement in service of the bank with continuity and full back wages.

4. Claim was resisted by the bank pleading the claimant unauthorisedly misappropriated cash amounting to Rs. 1300.00 entrusted to him on several occasions by Shri Devender Kumar for getting the same deposited in Saving Bank account of the latter. Claimant did not deposit the amounts, so received, in the account of Shri Devender Kumar. He misappropriated the money and in order to mislead the customer, he prepared fake counterfoils and handed over these counterfoils to Shri Devender Kumar.

5. He affixed "cash receipt" seal of the bank, without knowledge of the cashier and also manipulated signatures on the counterfoils, purported to be of authorised officials of the bank. He handed over those counterfoils to Shri Devender Kumar. Shri Devender Kumar visited the bank for withdrawal of money from his account and came to know that sums of money handed over by him to the claimant were not deposited in his account. He made a complaint to the bank. On consideration of full facts, claimant was placed under suspension. Charge sheet was served upon him. Domestic enquiry was constituted. Full and reasonable opportunity was accorded to the claimant to defend himself. Enquiry Officer submitted his report to the Disciplinary Authority. The Disciplinary Authority concurred with the report of the Enquiry Officer and awarded punishment of dismissal from service to the claimant.

6. The bank disputes that the claimant was victimised for his union activities. It presents that the claimant gained pecuniary advantage by misappropriation of money of a customer. The bank being a public sector financial institution, cannot repose confidence in such an employee. If such an employee is allowed to continue in service of the bank it would be highly prejudicial to the interest of the bank. Public will lose faith and confidence in banking system. Claimant had not only tarnished image of the bank in the eyes of the general public but also became non-dependable and unreliable for the bank. Financial Institution, like the banks are built on foundation of faith and trust reposed by the public. Considering all these facts, the bank dismissed the claimant from service and punishment awarded to him cannot be said to be disproportionate to his misconduct. Claim put forward may be dismissed, being devoid of merit, pleads the bank.

7. On pleadings of the parties, following issues were settled:

- (1) Whether enquiry conducted by the bank was just and fair?
- (2) Whether punishment awarded to the claimant was proportionate to misconduct?
- (3) As in terms of reference.

8. On consideration of facts unfolded by the claimant, preliminary issue relating to virus of enquiry was answered in favour of the bank and against the claimant, vide order dated 08.10.2012.

9. Arguments on proportionality of punishment were heard at the bar. Shri B.K. Pal, authorized representative, advanced arguments on behalf of the claimant. Shri Rajesh Mahendroo, authorised representative, presented facts on behalf of the bank. Written submissions were also filed by Shri Pal. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

Issue No.2

10. Prior to introduction of section 11-A of the Act, adjudicatory powers of the Tribunal were articulated in Buckingham & Carnatak Company [1951 (2) LLJ 314]. Four standards were delineated by the Labour Appellate Tribunal in the above case to render managerial right of taking disciplinary action vulnerable, namely, (i) where there is a want of bonafides or (ii) when it is a case of victimization or unfair labour practice or violation of the principles of natural justice, or (iii) when there is basic error of facts, or (iv) when there has been a perverse finding on the materials. This articulation was adopted by the Apex Court with slight modification in Indian Iron and Steel Company Limited [1958 (1) LLJ 260], without any acknowledgement to the precedent in Buckingham & Carnatic case (*supra*), wherein it was ruled that the power of the management to direct its own internal administration and discipline was not unlimited and liable to be interfered with by industrial adjudication when a dispute arises to see whether termination of services of a workman is justified and to give appropriate relief. However, it was announced that the jurisdiction of an Industrial Tribunal to interfere with the managerial prerogative of taking disciplinary action is not of appellate nature as the legislature has not chosen to confer such jurisdiction upon it. Hence Tribunal could not substitute its own judgement for that of the management. The Court laid down that in the following circumstances an industrial adjudicator can interfere with the disciplinary action taken by the employer: (1) when there is want of good faith, (2) when there was victimization or unfair labour practice, (3) when the management had been guilty of a basic error or violation of the principles of natural justice, or (4) when on the materials, the finding was completely baseless or perverse.

11. Enunciation (1) and (2), referred above, are addressed to the bona fides of the employer in initiating the action and inflicting the punishment, while postulates (3) and (4) are addressed to domestic enquiry. Therefore, an employer is required to act bona fide in initiating disciplinary action as well as in inflicting the punishment. In initiating the action, the alleged act of misconduct should not be a ruse for something else, such as the trade union activities of the workman or employers dislike of him for some personal reasons. The action should not be motivated by vindictiveness or ulterior purpose, so as to smack for victimization or unfair labour practice. Likewise in the matter of inflicting punishment, the employer should act fairly. In case punishment awarded is so shockingly disproportionate to the act of the misconduct, as no reasonable man would ever impose that itself may lead to an inference of malafides, victimization or unfair labour practice. In holding enquiry, the Enquiry Officer must comply with the rules of natural justice. He must not be a biased person and give reasonable opportunity to both sides for being heard. His findings should not be baseless or perverse.

12. In *Ramswartha Sinha* (1954 L.A.C. 697) the Labour Appellate Tribunal recognized the right of the management to ask for permission to adduce evidence before the Tribunal to justify its action in a "no enquiry" case. Following that proposition the Apex Court equated the cases of "defective enquiry" with "no enquiry" cases and ruled that in either cases, the Tribunal have jurisdiction to go into the merits of the case on the basis of evidence adduced before it by the parties. Reference can be made to the precedent in *Motipur Sugar Factory Pvt. Ltd.* [1965 (2) LLJ 162] where the employer had held no enquiry at all before the dismissal and, therefore, adduced evidence to justify its action before the Tribunal, which decision was upheld. The Apex Court discarded the plea on behalf of the workman that since no enquiry at all had been held by the employer, it had no right to adduce evidence to justify its stand before the Tribunal. In *Ritz Theatre* [1962 (II) LLJ 498] it was ruled by the Supreme Court that the Tribunal would be justified to go to the merits of the case and decide for itself on the basis of the evidence adduced whether the charges have indeed been made out. It announced that it would neither be fair to the management nor fair to the workman himself in such a case that the Tribunal should refuse to take the evidence and thereby drive the management to pass through the whole process of holding the enquiry all over again. Reference can also be made to the precedent in *Bharat Sugar Mills Ltd.* [1961 (11) LLJ 644].

In *Delhi Cloth and General Mills Company* [1972 (1) LLJ 180], Apex Court considered the catena of decisions over the subject and laid down the following principles:

- "(1) If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic

enquiry that may have been held by it, it is entitled to straightaway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.

- (2) If a domestic enquiry had been held, it is open to the management to rely upon the domestic enquiry held by it, in the first instance, and alternatively and without prejudice to its plea that the enquiry is proper and binding, simultaneously adduce additional evidence before the Tribunal justifying its action. In such a case no inference can be drawn, without anything more, that the management has given up the enquiry conducted by it.
- (3) When the management relies on the enquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance, to consider whether the enquiry proceedings conducted by the management, are valid and proper. If the Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits, no longer survives. It is only when the holds that the enquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence.
- (4) When the domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However, elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But, if the finding on the preliminary issue is against the management, the Tribunal will have

to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic tribunal being accepted as *prima facie* proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to take a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct.

- (5) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been available of, or asked for by the management, before the proceedings are closed, the employer can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper.

- (6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly, it is not its function to invite suo moto the employer to adduce evidence before it to justify the action taken by it.

- (7) The above principles apply to the proceedings before the Tribunal, which have come before it

either on a reference under Section 10 or by way of an application under Section 33 of the Act.

14. Keeping in view the proposition laid by the Apex Court in Delhi Cloth and General Mills Company (*supra*), the Parliament inserted section 11-A in the Act, which came into force w.e.f. 15th of December, 1971. In the statement of objects and reasons for inserting section 11-A, it was stated:

"In Indian Iron and Steel Company Limited and Another Vs. Their Workmen (AIR 1958 S.C. 130 at p.138), the Supreme Court, while considering the Tribunal's power to interfere with the management's decision to dismiss, discharge or terminate the services of a workman, has observed that in case of dismissal on misconduct, the Tribunal does not act as a court of appeal and substitute its own judgment for that of the management and that the Tribunal will interfere only when there is want of good faith, victimization, unfair labour practice, etc., on the part of the management.

2. The International Labour Organisation, in its recommendation (No.119) concerning 'Termination of employment at the initiative of the employer' adopted in June 1963, has recommended that a worker aggrieved by the termination of his employment should be entitled to appeal against the termination among others, to a neutral body such as an arbitrator, a court, an arbitration committee or a similar body and that the neutral body concerned should be empowered to examine the reasons given in the termination of employment and the other circumstances relating to the case and to render a decision on the justification of the termination. The International Labour Organisation has further recommended that the neutral body should be empowered (if it finds that the termination of employment was unjustified) to order that the worker concerned, unless reinstated with unpaid wages, should be paid adequate compensation or afforded some other relief.

3. In accordance with these recommendations, it is considered that the Tribunal's power in an adjudication proceeding relating to discharge or dismissal of a workman should not be limited and that the Tribunal should have the power, in cases wherever necessary to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other reliefs to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. For this purpose, a new Section 11-A is proposed to be inserted in the Industrial Disputes Act, 1947....."

15. After insertion of section 11-A, the Apex Court summed up the law in the case of Firestone Tyre and Rubber Company [1973 (1) LLJ 278] in the following propositions:

"(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, as employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgement over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimization, unfair labour practice or mala fide.

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a *prima facie* case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognized that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the

first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimization.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in *The Management of Panitole Tea Estate Vs. The workmen, within the judicial decision of a Labour Court or Tribunal*".

16. Jurisdiction to interfere with the punishment is also not confined to the case where punishment is shockingly disproportionate to the act of the misconduct. The Tribunal has power of substituting its own measure of punishment in place of managerial wisdom. Change in legal position, post introduction of section 11A of the Act has been effectively summarized in the case of *Ambassador Sky Chef* (1996 Lab. I.C. 299) wherein High Court of Bombay observed that the section gives specifically two fold powers to an industrial adjudicator : firstly, it is a virtual power of appeal against the findings of fact made by the Enquiry Officer in his report with regard to the adequacy of the evidence and conclusion on facts, and secondly, and far more important, it is the power of re-appraisal of quantum of punishment. Now no restriction lies on an industrial adjudicator to interfere with the enquiry only on four grounds, referred above. However, wide discretionary powers with the adjudicator are to be exercised in judicial and judicious manner before it interferes with the order of misconduct or punishment.

17. With this prelude in mind, factual matrix of the controversy are to be addressed to for ascertaining quantum of punishment for misconduct proved against the claimant. To know the allegations, charge sheet Ex. MW1/3 is to be looked into, which deciphers allegations as follows:

"You were working as part time sweeper at our Faridabad branch. Pending disciplinary action, you were placed under suspension vide letter No. ZOD:IRC:SUS:01:97 dated 24.07.1997, for your alleged fraudulent acts:

Following facts have been reported against you:

Shri Devender Kumar, a soft drink seller at KC Cinema was an old acquaintance of yours. On 11.07.97, he opened a Saving Account no. 36895 at Faridabad branch with an initial deposit of Rs. 500.00, which account was introduced by you. Since the work place of Shri Devender Kumar was away from the bank, he filled in the cash deposit slips (OG

73 PS) and handed over the same alongwith cash for deposit in his aforesaid account, on seven occasions, as under:

| Date | Amount (Rs.) |
|--------------|----------------|
| 11.07.1997 | 100.00 |
| 14.07.1997 | 200.00 |
| 14.07.1997 | 250.00 |
| 15.07.1997 | 250.00 |
| 16.07.1997 | 200.00 |
| 17.07.1997 | 200.00 |
| 19.07.1997 | 100.00 |
| TOTAL | 1300.00 |

In token of having deposited the above amounts, you handed over the counterfoil to Shri Devender Kumar the next day, after affixing rubber stamp of the bank and putting signature, in order to make him believe that the requisite amounts have been deposited in his account under signatures of an official of the bank. Later on, it came to light that the amounts were neither deposited in the account of Shri Devender Kumar nor accounted for in the books of the bank. On 22.07.97, Shri Devender Kumar visited the branch for withdrawing cash and enquired for the balance available in his account. The Saving Bank Counter In-charge informed him that only an amount of Rs. 500 is available in his account, the initial deposit made while opening his account. From records of the bank, it is observed that on 21.07.97 and 22.07.97, you were on leave. Shri Devender Kumar confronted you at KC Cinema to enquire about the amount in cash tendered by him to you for deposit in his account. On not receiving a satisfactory response, Shri Devender Kumar lodged a complaint with the branch for making good the shortfall in his account.

On scrutiny of the counterfoils produced by Shri Devender Kumar, it is observed that the signatures were not of the Cash Receipt Cashier but resembled your signatures/handwriting and the cash receipt stamp in full has been affixed therein, which is not the general practice adopted by the regular cashiers.

From the above circumstances, it is apparent that you misappropriated money of a customer of the bank and to conceal your fraudulent acts, you adopted fraudulent means. The following irregularities have been committed by you:

1. You misappropriated an amount of Rs.1300.00 tendered by a customer of the branch.
2. You failed to deposit the amount tendered by the customer in his account.
3. Without the knowledge of the receipt cashier of the branch, you used the cash receipt stamp, affixed on the counterfoil of the cash receipt

vouchers and put signatures of officials/cashier in token of having received the amount and thus defrauded the bank.

Your above acts constitute gross misconduct within the meaning of Clause 19.5 of the Bipartite Settlement, for which you are charged for doing acts prejudicial to the interest of the bank."

18. On above charges, the Enquiry Officer recorded his report dated 16.04.99 wherein he concluded that all charges stood proved against the claimant. It would be in fitness of things to extract conclusions arrived at by the enquiry officer which are reproduced thus:—

"It has also come unrebuted and undisputed on record that the account holder on hearing regarding non-crediting of the amount aggregating to Rs. 1,300 to his account (MEX-2), which was handed over by him to Sri Bijender Singh and for which he was holding counterfoils (MEX-4 to 10), he immediately on 22.3.97 itself lodged a complaint to that effect (MEX-13) and once again reiterated the same on 1.10.97 (MEX-14) that too in the presence of Mr. Padroo, Manager, Faridabad branch and requested for settlement of dues.

Further it has come on record unrebuted and undisputed that the counterfoils (MEX-4 to 10) do not bear the signatures/initials of the regular cashier Mr. O.P. Dhawan and the manner and style of affixing the cash receipt seal is not as per the normal practice (MEX-3, 15 to 17) and the said amounts are not accounted for in the books of the bank (MEX-2 and 11)."

.....
.....

"In the instant case/given circumstances, there is no reason to disbelieve the version of Shri Devender Kumar that he has handed over case on seven different occasions amounting to Rs. 1300.00 to Shri Bijender Singh for depositing in his Saving Bank account No. 36895.

Thus basing on the facts deposed by Shri N. Narayanan, Officer, Vigilance Cell, RI, and duly supported by various management exhibits and the analysis given above and in the absence of any evidence/records produced by the charge sheeted employee to the contrary, I am compelled to come to the conclusion that Shri Brijender Singh did receive cash amounting to Rs.1300.00 on various dates between 11.07.97 and 19.07.97 from Shri Devender Kumar, holder of SB Account No. 36895 for depositing the same in his said account which he failed to deposit and to cover up he handed over manipulated/forged counterfoils to the said customer and thus misappropriated the said amount.

Accordingly, Point No.1, i.e. that he unauthorisedly accepted cash on various occasions from a customer of the branch amounting to Rs.1300.00 and misappropriated it, is answered in affirmative.

In the light of the above discussions my conclusion and findings on the points and also based on records and oral evidence/s made available before me, I find that the management has been able to establish the charge in the enquiry held. Accordingly, I hold Shri Brijender Singh guilty of the charge levelled against him vide charge sheet No. ZOD:IRC:CSW-01:98:CS-611 dated 05.01.1998."

19. On consideration of the findings recorded by the Enquiry Officer, the Disciplinary Authority dismissed Shri Bijender Singh from service vide order dated 26.07.1999. Question for consideration comes as to whether there are any justifications for punishment of dismissal? For an answer to the proposition, it would be expedient to note legal principles in that regard. Right of an employer to inflict punishment of discharge or dismissal is not unfettered. The punishment imposed must be commensurate with gravity of the misconduct, proved against the delinquent workman. Prior to enactment of section 11-A of the Act, it was not open to the industrial adjudicator to vary the order of punishment on finding that the order of dismissal was too severe and was not commensurate with the act of misconduct. In other words, the industrial adjudicator could not interfere with the punishment as it was not required to consider propriety or adequacy of punishment or whether it was excessive or too severe. Apex Court, in this connection, had, however, laid down in Bengal Bhattee Coal Company [1963(1) LLJ 291] that where order of punishment was shockingly disproportionate with the act of the misconduct which no reasonable employer would impose in like circumstances, that itself would lead to the inference of victimization or unfair labour practice which would vitiate order of dismissal or discharge. But by enacting the provisions of section 11-A of the Act, the Legislature has transferred the discretion of the employer, in imposing punishment, to the industrial adjudicator. It is now the satisfaction of the industrial adjudicator to finally decide the quantum of punishment for proved acts of misconduct, in cases of discharge or dismissal. If the Tribunal is satisfied that the order of discharge or dismissal is not justified in any circumstances on the facts of a case, it has the power not only to set aside order of punishment and direct reinstatement with back wages, but it has also the power to impose certain conditions as it may deem fit and also to give relief to the workman, including award of lesser punishment in lieu of discharge or dismissal.

20. It is established law that imposing punishment for a proved act of misconduct is a matter for the punishing authority to decide and normally it should not be interfered with by the Industrial Tribunals. The Tribunal is not required to consider the propriety or adequacy of punishment. But

where the punishment is shockingly disproportionate, regard being had to the particular conduct and past record, or is such as no reasonable employer would ever impose in like circumstance, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice. Law to this effect was laid by the Apex Court in Hind Construction and Engineering Company Labour (1965 (1) LLJ 462). Likewise in Management of the Federation of Indian Chambers of Commerce and Industry (1971 (II) LLJ 630) the Apex Court ruled that the employer made a mountain out of a mole hill and had blown a trivial matter into one involving loss of prestige and reputation and as such punishment of dismissal was held to be unwarranted. In Ram Kishan (1996 (1) LLJ 982) the delinquent employee was dismissed from service for using abusive language against a superior officer. On the facts and in the circumstances of the case, the Apex Court held that the punishment of dismissal was harsh and disproportionate to the gravity of the charge imputed to the delinquent. It was ruled therein, "when abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of abusive language. No straight-jacket formula could be evolved in adjudicating whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts".

21. In B.M. Patil (1996 (1) LLJ 536), Justice Mohan Kumar of Karnataka High court observed that in exercise of discretion, the disciplinary authority should not act like a robot and justice should be moulded with humanism and understanding. It was assess each case on its own merit and each set of fact should be decided with reference to the evidence recording the allegation, which should be basis of the decision. The past conduct of the worker may be a ground for assuming that he might have a propensity to commit the misconduct and to assess the quantum of punishment to be imposed. In that case a conductor of the bus was dismissed from service for causing revenue loss of 50p to the employer by irregular sale of tickets. It was held that the punishment was too harsh and disproportionate to the act of misconduct.

22. After insertion of section 11-A of the Act, the jurisdiction to interfere with the punishment is there with the Tribunal, who has to see whether punishment imposed by the employer is commensurate with the gravity of the act of misconduct. If it comes to the conclusion that the misconduct is proved, it may still hold that the punishment is not justified because misconduct alleged and proved is such as it does not warrant punishment of discharge or dismissal and where necessary, set aside the order of discharge or dismissal and direct reinstatement with or without any terms or conditions as it thinks fit or give any other relief, including the award of lesser punishment, in lieu of discharge or dismissal, as the circumstance of the

case may warrant. Reference can be made to a precedent in Sanatak Singh (1984 Lab. I.C.817). The discretion to award punishment lesser than the punishment of discharge or dismissal has to be judiciously exercised and the Tribunal can interfere only when it is satisfied that the punishment imposed by the management is highly disproportionate to the decree of the guilt of the workman. Reference can be made to the precedent in Kachraji Motiji Parmar (1994 (II) LLJ 332). Thus it is evident that the Tribunal has now jurisdiction and power of substituting its own measure of punishment in place of the managerial wisdom, once it is satisfied that the order of discharge or dismissal is not justified. On facts and in the circumstances of a case, Section 11A of the Act specifically gives two folds powers to the Industrial Tribunal, first is virtually the power of appeal against findings of fact made by the Enquiry Officer in his report with regard to the adequacy of the evidence and the conclusion on facts and secondly of foremost importance, is the power of reappraisal of quantum of punishment.

23. Power to set aside order of discharge or dismissal and grant relief of reinstatement or lesser punishment is not untrammelled power. This power has to be exercised only when Tribunal is satisfied that the order of discharge or dismissal was not justified. This satisfaction of the Tribunal is objective satisfaction and not subjective one. It involves application of the mind by the Tribunal to various circumstances like nature of delinquency omitted by the workman, his past conduct, impact of delinquency on employer's business, besides length of service rendered by him. Furthermore, the Tribunal has to consider whether the decision taken by the employer is just or not. Only after taking into consideration these aspects, the Tribunal can upset the punishment imposed by the employer. The quantum of punishment cannot be interfered with without recording specific findings on points referred above. No indulgence is to be granted to a person, who is guilty of grave misconduct like cheating, fraud, misappropriation of employers fund, theft of public property etc. A reference cannot be made to the precedent in Bhagirath Mal Rainwa (1995 (1) LLJ 960).

24. In the light of above legal propositions, it would be considered as to whether punishment awarded to the claimant does not commensurate to his misconduct? As projected above, the claimant committed acts of criminal breach of trust when he received cash amounting to Rs.1300 on various dates between 11.07.97 and 19.07.97 from Shri Devender Kumar, a customer of the branch, for depositing in his SB account No.36895 and misappropriated it. He also committed acts of forgery and using forged document as genuine when he handed over manipulated/forged counterfoils to the customer. He handed over those forged receipts to Shri Devender Kumar to make him believe that money had been deposited in his account and thus committed an act of cheating also.

25. Fraud/cheating is serious misconduct besides, being a criminal offense. One who commits fraud and makes his employer liable to pay the amount defrauded to the customers, not only hoodwinks his employer but customers also. He puts his employer's reputation to stake in the eyes of the customers as well as general public. The customer, who finds himself defrauded, is put to shock and agony. On the other hand the employer loose faith in such an employee. An employee who commits criminal breach of trust, forgery and uses forged document as genuine one destroys fabric of confidence, reposed in him by his employer as well as the customer. When such an employee is found in the service of a banking institution, public may opt not to bank upon on such an institution. Such an employee is a black sheep, who may make the institution to sink. His continuance in service would tarnish the image of his employer. All these factors are sufficient to conclude that such an employee looses his right to continue in job.

26. Whether such employee should be awarded punishment of discharge simpliciter? Punishment of discharge simpliciter neither operates as stigma nor debars him from getting retirement benefits. Retirement benefits are given to an employee for efficient services rendered to the employer. One who defrauded the employer as well as the customer cannot be said to have rendered efficient service. Therefore such an employee cannot put a claim for retirement benefits. His debase act would make him to receive ultimate penalty. Therefore I am of the considered opinion that no case is made out to show that punishment of dismissal awarded to the claimant was disproportionate to his misconduct, warranting interference by the Tribunal. No case of victimization, malafide or unfair labour practice has been put forward by the claimant, in the matter of award of punishment to him. All these reasons would make me to comment that punishment of dismissal awarded to the claimant commensurate to his misconduct. Issue is, therefore, answered in favour of the bank and against the claimant.

Issue No. 3

27. Not even an iota of evidence was brought over the record by the claimant to question legality of punishment awarded to him. When there is vacuum of evidence of malafide, arbitrariness, victimization and exercise of unfair labour practice on the part of the bank, it cannot be said that punishment awarded to the claimant was not justified. There cannot be any reason to intermeddle with the punishment of dismissal awarded to the claimant. Consequently it is announced that punishment of dismissal awarded to the claimant vide order dated 26.07.1999 withstands standards of legality as well as justifiability. No interference is called for in the punishment by this Tribunal. Claim put forward by Shri Bijender Singh is liable to be brushed aside. Accordingly, his claim is dismissed. An award is passed in favour of the bank and

against the claimant. It be sent to the appropriate government for publication.

Dated : 11-3-2013

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 13 जून, 2013

का आ 1300.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 346/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 17-05-2013 को प्राप्त हुआ था।

[सं एल-12012/236/1996-आई आर० (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 13th June, 2013

S.O. 1300.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. I.D. No. 346/2005) of the Central Government Industrial Tribunal/Labour Court-II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Allahabad Bank and their workman, which was received by the Central Government on 17-05-2013.

[No. L-12012/236/1996-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri A.K. Rastogi, Presiding Officer

Case No. I.D. 346/2005

Registered on 16.8.2005

Sh. Naresh Batra, Ex. CCC, Flat No.524/1, Modern House Complex, Manimajra, UT, Chandigarh

....Petitioner

Versus

The Regional Manager, Allahabad Bank, Sector 17, Chandigarh

.....Respondent

APPEARANCES :

For the Workman

Sh. B.K. Sharma AR

For the Management

Sh. I.P. Singh Advocate

AWARD

Passed on 2.5.2013

Central Government vide Notification No. L-12012/236/96/ IR(B-11) Dated 22/28.7.1997, by exercising its powers under Section 10 sub-section (1) Clause (d) and sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of Allahabad Bank, Chandigarh in dismissing the services of Sh. Naresh Batra, Clerk-cum-Cashier w.e.f. 20.7.1995 is legal and justified? If not, to what relief the said workman is entitled?"

As per claim statement the workman was posted as Clerk-cum-Cashier in Manooke Branch of respondent. On 29.1.1994 he was charge-sheeted —

1. For engaging himself in gainful employment during absence from duty on his transfer to Rattewal Branch.
2. To have engaged himself in speculation of shares during the course of his aforesaid employment; and
3. For willfully avoiding the bank's instruction to join the duties at the Rattewal Branch on his transfer.

According to the workman the said charges had been levelled against him on the basis of a certificate dated 10.2.1994 allegedly signed by him hence, on receiving the charge-sheet the workman while submitting a short defence statement requested the respondent to supply him a copy of the said certificate. But the respondent instead of supplying him the document ordered an inquiry against him. The inquiry was concluded in one day only and the Presenting Officer maneuvered the workman to accept the charges with the promise that he would be let off with minor penalty if he confesses his guilt, otherwise he will have to face major penalty in the form of dismissal from service. The workman was thus made to admit the charges. On the findings of the Inquiry Officer a show cause notice was served upon the workman which was duly replied by the workman but the disciplinary authority without taking into consideration anything and without application of mind passed the order discharging the claimant from service. The appeal of the claimant too failed. According to the claimant the inquiry was held against the principle of natural justice. As the alleged certificate dated 10.2.1994 was not supplied to him despite his demand and his admission had been obtained by allurement. He has prayed for quashing the punishment order of discharge from service.

The claim was contested by the management and written statement was filed. Parties led their evidence. At the stage of arguments, however it was found that the claim of the workman is beyond reference. The reference is about the dismissal from service of the workman while the claim is about discharge from service. •When the discrepancy was found out on 12.1.2011 the learned counsel for the workman requested for time for proceeding further in the case. Thereafter time and again adjournment was requested on behalf of workman on the ground that Corrigendum from the Ministry is awaited but till date no Corrigendum was received from the Ministry and workman also did not appear after 1.5.2012. Hence the reference is being decided by this order.

As stated above the reference is about the dismissal from service of the workman but as per claim statement the workman had been discharged from service. Obviously there is no dispute about the punishment of dismissal from service between the parties. Obviously it is a case of no dispute and a 'No dispute' award is passed accordingly. Hard copy and soft copy of the award be sent to the Central Government for further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 14 जून, 2013

का० अ० 1301.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, कोरडाइट फैब्रियरी, नीलगिरी एवं अदर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 11/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 08-06-2013 को प्राप्त हुआ था।

[सं० ए०-14012/17/2011-आईआर (डी०य०)]

जोहन तोपनो, अवर सचिव

New Delhi, the 14th June, 2013

S.O. 1301.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 11/2012) of the Central Government Industrial Tribunal-cum-Labour Court Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the General Manager, Cordite Factory, Nilgiris and others and their workman, which was received by the Central Government on 08.06.2013.

[No. L-14012/17/2011-IR (DU)]

JOHAN TOPNO, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Friday, the 22nd February, 2013

Present : A.N. JANARDANAN, Presiding Officer

INDUSTRIAL DISPUTE No. 11/2012

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Cordite Factory and their Workman)

BETWEEN

Smt. R. Arthi : 1st Party/Petitioner
Vs.

1. The General Manager : 2nd Party
Cordite Factory, 1st Respondent
Aravankadu
Nilgiris-643202
2. M/s Alert Security Services : 2nd Party
No. 106, Sowrimuthu Street 2nd Respondent
Red Fields
Coimbatore-641045

APPEARANCE:

| | | |
|--------------------------------------|---|----------------------------------|
| For the 1st Party/ Petitioner | : | Sri S. Vaidyanathan, Advocate |
| For the 2nd Party/ 1st Management | : | Mr. A. Ashok Kumar, Advocate |
| For the 2nd Party/ 2nd Management | : | Set Ex-Parte |

AWARD

The Central Government, Ministry of Labour & Employment vide its Order L-14012/17/2011-IR(DU) dated 06.02.2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the management of M/s Alert Security Services, Coimbatore, a Cordite Factory Hospital Management, Aravankadu in terminating the services of Smt. R. Arthi w.e.f 13.10.2010 without following the provisions of Section 25(F) of Industrial Dispute Act, 1947 is justified or not? What relief the workwoman is entitled to?"

2. After the receipt of Industrial Dispute, this Tribunal numbered it as ID 11/2012 and issued notices to both sides. Both sides entered appearance through their respective counsel and filed their Claim, Separate Counter Statements and Reply Statement, as the case may be.

3. The averments in the Claim Statement bereft of unnecessary details are as follows :

The petitioner joined the services of Cordite Factory (Hospital) as recruited through M/s Alert Security Services on 16.02.2008. To deprive employment under the Cordite Factory the so-called contract labour system was used to be introduced to get the work done by them despite entire payment made only by the Cordite Factory. She was required by the Cordite Factory to work through VIP Enterprises, Dharma Agency, ASR Constructions and finally M/s Alert Security Services, R2 as Contractors. With the change of the Contractors even, employees continued to remain the same only. It is defeating provisions of labour laws. Petitioner was employed as a Ward Sahayak at the Cordite Factory Hospital, Aravankadu. During her three years of service there were no adverse remarks against her. Upon insistence of the Cordite Factory the so-called Contractor, issued a certificate to make the employees a scapegoat. The Contract Labour System is a ruse and a camouflage. Petitioner has undergone in-house training for para-medical staff, conducted by the Cordite Factory, given only for permanent employees and not for contract employees. The entire Attendance Register and Wage Slip are with the Cordite Factory. On 13.10.2010 Hospital Staff informed that she was dismissed from service. Her work has been perennial in nature. During conciliation of the dispute raised, she was given employment on 17.01.2011 by the Factory. Orders of dismissal and reinstatement were issued by the Chief Medical Officer of the Factory, which is not necessary if she is a contract employee. On the very next day of reinstatement she was disengaged by the Factory. Before the Conciliation Officer on 20.04.2011, Sivasankaran, HOS (Vigilance) and CG representing Cordite Factory on behalf of the General Manager and the so-called Contractor agreed to reinstate her. She was given employment on 27.05.2011 for three days and again she was terminated from service on 28.05.2011, to overcome the defects that the petitioner could not be terminated and reinstated by the First Respondent, First Respondent sent letter dated 28.05.2011 to R2 to replace the petitioner. In the separately maintained Attendance Register and Payment Register by the Cordite Factory, it started affixing the Rubber Stamp of M/s Alert Security Service in the Attendance Register meant for persons engaged by them. Attendance Register will show that the work performed by the petitioner was countersigned by the Cordite Factory officials. She is in possession of the ID Card issued by the Cordite Factory for three days to work in the Hospital. Contract is sham and nominal. The entire hospital work was performed by the petitioner. No Contractor has any separate hospital to engage the petitioner. Her demand for Experience Certificate from the Cordite Factory was being responded saying to get from the Contractors. There is contract of service and not contract for service. Except R2 no Contractor had valid registration under Contract Labour Abolition Act First

Respondent engaged the petitioner in service directly. Petitioner is an employee of the First Respondent. She completed 480 days of continuous service in a period of 24 calendar months and is deemed to have attained permanent status under R1. She was getting salary of Rs. 5,360 per month at the time of disengagement. No Charge Sheet was issued to her nor was any enquiry conducted. Non-compliance of Section-25(F) renders the termination void ab initio. The same is to be set aside and she is to be reinstated into service w.e.f. 13.10.2010 with all benefits. Even if there is a Contract Labour System., for noncompliance of Section-25F of the ID Act, R1 is liable to grant the relief in terms of Section-21(4) of the Contract Labour (Regulation and Abolition), Act 1970.

4. Counter Statement averments of the First Respondent are as follows:

The ID is neither maintainable in law nor on facts and is to be dismissed in-limini. The first Respondent had entered into service contract with M/s. ASR Rice Mundy and Construction represented by Sri Arockiadoss Simon (ADS), Nilgiris as per supply order dated 07.12.2009 for a period from 07.12.2009 to 30.12.2010, which was subsequently short closed on 26.05.2010 due to unsatisfactory performance of the contract. The terms and conditions of the service contract the job requirement involved (a) assisting MO/Ward Sister in attending the patients (b) cleaning and making beds for patient ensuring no concealment of any unauthorized articles in bedding of the patients (c) collecting kits for patients from Ward Master, etc. upto (k) as described in the Claim Statement. M/s ADS had deployed the petitioner alongwith 12 others at the Cordite Factory Hospital. Later came M/s Alert Security Services as per order dated 23.06.2010 from 23.06.2010 to 31.01.2011. He also engaged the petitioner till 2011. The contract as above was concluded every year through an open tender. The successful tenderer was at liberty to employ any person to execute the work. The Management has had no role in the engagement of the contract labourers. It only assesses whether the terms and conditions as set out in the contract are fulfilled or not, only to the extent of fulfillment of which the payment is made to the Contractors. Petitioner cannot claim parity with regular employees of the Respondent. First Respondent had made hospital service contract with M/s ASR Rice Mundy and Construction represented by Sri Arockiadoss Simon, Nilgiris which was subsequently short closed by letter dated 26.05.2010 due to continuing unsatisfactory performance of the contract. A contract was further entered with M/s Alert Security Services, Coimbatore for the work at CFH for whole job basis to a period of one year. In both the contracts the petitioner was engaged by the Contractors to execute the contract and not with the First Respondent. The only requirement of the First Respondent is that Contractors have to get the PVR (Police Verification Report) of the labourers before engaging them in the First

Respondent premises, being a defence installation for security purposes. The Contractor supervises the work and disburses wages directly to the contract labourers. Petitioner is not a Central Government Employee. Petitioner was governed by service conditions laid down by the Contractor and not by the service conditions or recruitment rules applicable to regular employees. First Respondent ensures payment of minimum wages to the petitioner and compliance of statutory obligations by Contractors. Presumptions raised by the petitioner are frivolous and unconstitutional. Petitioner was under the employment of various contractors only. The dispute is between petitioner and R2 having employer-employee relationship inter se. She is workman of M/s Alert Security Services. Section-25 of the ID Act is applicable only to 2nd Respondent with respect to the petitioner. As per terms and conditions of Supply Order, selection/replacement of contract labourers is the sole responsibility of the Second Respondent. The claim is to be rejected.

5. Second Respondent's contentions in its counter statement, briefly read as follows:

Second Respondent is a registered contractor of the First Respondent and the former took the contract on 01.07.2010. The petitioner and other employees who were already employed under the First Respondent were asked to be engaged by Second Respondent by R1. When the contract was awarded Second Respondent was asked to absorb the existing employees as they were experienced and working under the First Respondent, which did not allow R2 to bring a new hand or to replace the person like the petitioner. As instructed by R1 petitioner was not given employment and R2 is not responsible for the removal of Smt. R. Arthi. R2 was willing to continue her in the First Respondent but it ultimately declined to provide employment to her. The claim of the petitioner only against R2 is to be rejected.

6. Reply Statement averments briefly read as follows :

Second Respondent has filed a counter supporting the petitioner. As admitted by R1 in the Counter Arthi has committed misconduct and R1 directed R2 to replace Arthi. It shows that petitioner was an employee under R1 and R1 has the final say in the matter of employment and disciplinary and administrative control over her. It is also stated by R1 in Counter that petitioner had behaved in a disrespectful manner. Admittedly, no Charge Sheet was issued or enquiry conducted. She does not know English language. She does not know how to frame the sentence mentioned in Annexure-C dated 21.04.2011. Reason for R1 terminating her was firstly, one Stella working with her while was harassed by R1 she interfered. Secondly, petitioner made an issue of sexual harassment to the petitioner. This was not initially pleaded in the Claim Statement hoping that First Respondent and Officers would change for good

and provide employment to the petitioner. Petitioner was reinstated on 27.05.2011 and again terminated on 30.05.2011. She worked on 27th, 28th May and 29th being a Sunday she was stopped from work from 30.05.2011. R1 produced the letter dated 28.05.2011 before this, Court for the first time With the help of Union she has written complaints to the First Respondent about the sexual harassment towards her. Letters dated 20.10.2010 and 16.06.2011 were written about the sexual harassment, but with no action. Copies of complaints were sent to the General Manager, Chairman and Ministry of Defence Petitioner has completed paramedical course producing which certificate the employment was obtained. She was given in-house training in Paramedical staff given only to the permanent staff of the Hospital. The Certificate dated 28.01.2009 was issued by R1. Her Attendance was written in the Attendance Book and she was asked to sign it countersigned by the Officers of R1. If the Contractor was present there is no need for the counter signature. In the Register of Wages though seal of R2 is affixed, the Register was countersigned by the doctor of the First Respondent and Dy. Labour Commissioner (Central). The Muster Roll was also scrutinized by the ALO (Central). As on 01.12.2009 sanctioned strength of Cordite Factory was 6 in the case of Ward/Sahayak Male and Female and there were four persons working. In the remaining two, the petitioner was employed. Though there was a tender with M/s Alert Security Services as the successful tenderer, petitioner was employed in the permanent sanctioned post by R1. Petitioner had already been employed even before the advent of Second Respondent. But with no change of employees, with change of Contractor contract system is nothing but a camouflage. Court has to pierce the veil and see the truth. There have only been verbal instructions to continue the old employees as every time the new contract employees cannot be trained to do the work. By the time the training is over the period of contract would expire. There was no contract employee as per Contract Labour Act, 1970. Petitioner is now registered under the Employment Exchange. R1 accepted that the work was supervised only by the officials of R1. Letter dated 13.10.2010 of R1 directing R2 to terminate the services of the petitioner on the ground of misconduct is stigma. Based on the complaint dated 12.10.2010, order dated 13.10.2010 was issued by R1. As many as 20 persons have signed the complaint. But not a single person has been examined. Under the RTI Act reply has been given that joint representation from Government servants have to be viewed as subversive of discipline. Petitioner is not aware of any action against the 20 persons who made joint complaint which is false. Before the representation under Right to Information Act, CMO(IC) of Cordite Factory Hospital agreed to take the petitioner under the employment in letter dated 14.01.2011. R1 has mentioned that petitioner was Ward Sahayak. It is M. Thakur, CMO, Incharge of Cordite Factory Hospital, alleged of sexual harassment, who dismissed petitioner from service not once but twice.

Though she was offered employment w.e.f. 17.01.2011 after ID was raised, she was made only to stand whole day and informing not to come for work from 18.01.2011. It is strange that Sivasankaran who agreed to provide employment before the Conciliation Officer dated 16.05.2011 has stated in the Counter that petitioner is not entitled to any relief. She had also been given Casual Visitors Pass. Slowly R1 was improving their documents mentioning the petitioner as contract employee. Attendance and Wage Register would depict her as direct employee. Register also establishes petitioner to have had completed 480 days of continuous service in a period of 24 calendar months under R1 and she is deemed to have attained permanent status. In certain other areas of contract work the contract is cancelled sending out the Contractor and continuing the contract employees directly supervising the work and paying the salary. Action of R1 is arbitrary and illegal by utilizing contract labourers on sanctioned strength in the estimated strength. Petitioner is not regularized to defeat which regularization R1 terminated her services. It is also to escape from complaint of sexual harassment. At the most she can be considered as Casual Labour under R1. Once the termination is held illegal she is entitled to regularization. Her last drawn pay was Rs. 206.80 per day paid monthly by R1, who insisted her signature in the register said to have been maintained by R2.

7. Points for consideration are :

- (i) Whether the action of the Management of M/s Alert Security Services, Coimbatore, a Cordite Factory Hospital Management, Aravankadu in terminating the services of Smt. R. Arthi w.e.f. 13.10.2010 without following the provision of Section-25-F Act is justified or not?
- (ii) To what relief the concerned workman is entitled?

8. Evidence consists of the oral testimony of WW1 and Ex. W1 to Ex. W14 on the petitioner's side and on the Management's side MW1 was examined and Ex. M1 to Ex. M6 marked. Second Respondent after filing a counter remained consistently absent thereafter and did not take part in the further proceedings and is set ex parte.

Points (i) & (ii)

9. Heard both sides. Perused the records, documents, evidence and written arguments on behalf of the First Respondent. Both sides keenly argued in terms of their case in their respective pleadings with reference to cited decisions. The conspicuous arguments on behalf of the petitioner include that the petitioner is seen engaged as a contract worker. She is seen to continue to be engaged even though contractor changes successively. Her engagement is to be understood as contract of service under First Respondent and not contract for service

through the Second Respondent. Petitioner was working as Ward Sahayaka. Out of 6 Ward Sahayaks as the sanctioned strength for the post only 4 posts, were filled up and two were outsourced. MW1 is seen to admit that Ward Sahayak is a sanctioned post MW1-Witness for the Management does not know whether the 2nd Respondent has registered under the CLRA Act. When in the light of a common purported complaint against the petitioner lodged, a misconduct tends to be attributed against her. Ex. M2-Common Complaint, in its nature and form is erratic as it is and it is to be viewed with disfavor in a collective manner, which is subversive of discipline. A direct employee cannot be converted into a contract employee. Petitioner's engagement is against sanctioned post. The nature of her work is continuous. If the post is not a sanctioned one there is no claim for the relief. Concept of backdoor entry is out of the realm of public employment. Petitioner acquired status of permanent employee by having worked more than 480 days within a period of 24 calendar months. The Second Respondent, the so-called Contractor remained exparte after filing counter admitting to be registered contractor. But he has not produced license or certificate of registration as required by the provisions after going through various processes commencing with application for license in prescribed form till the obtaining of the same. Correspondent duties of the Principal employer and the Licensed Contractor to maintain prescribed registers in relevant forms are also highlighted. There is no evidence of any temporary registration made or any temporary license obtained. There is also provision for submission of annual return by Principal Employer to Registering Officer who has duty to maintain Register of registered contractors. The Tribunal has the duty to lift the veil to come to know the nature of the employment whether as direct or under the Contractor. If it is not a genuine contract for employment and it is a ruse and a camouflage. The allegation of sexual harassment towards the petitioner has not been denied by the Respondent. No enquiry has been held against the petitioner though allegations of misconduct are discernible against her. She was not charge sheeted either. There is violation of Section-25F of the ID Act when she is actually a casual employee under the First Respondent and while by reason of her having admittedly worked continuously for more than 480 days within a period of 24 calendar months, she is also deemed to have attained permanent status under the First Respondent. Her termination from service in violation of Section-25F of ID Act is *void ab initio*. She is entitled to be reinstated into service with all benefits.

10. Prominent arguments on behalf of the First Respondent are that the dispute is between the petitioner and the Contractor Employer, Second Respondent. Petitioner is only contractor's employee. R1 has no role over the engagement of petitioner as contract worker for the work under the First Respondent or for her termination. Due to misbehavior of the petitioner with the staff of Cordite

Factory Hospital (CFH), R1 only directed R2 to replace her by deploying her in any other location. Section-25F of the ID Act is applicable only to R2. As held by the Supreme Court in STEEL AUTHORITY OF INDIA LTD. VS. UNION OF INDIA AND ANOTHER (2006-12-SCC-233) the employee taking definite stand as contract worker cannot take contradictory and inconsistent plea that he was also workman of the principal employer. The claim is devoid of merits.

11. On a consideration of the rival contentions I am led to the conclusion that the petitioner appointed against a sanctioned post of Ward Sahayaka on contract basis through the Second Respondent Contractor. It is borne out by records and evidence that there have been some unpleasant situations in relation to the petitioner with a Medical Officer. Though there has emanated a common complaint against the petitioner regarding the undesirability of continuing her for the services in the hospital, such a petition from its nature and content and having regard to the signatories to them does not sound genuine and may have been made use of as a cover to send out her from her engagement as Ward Sahayaka. The crucial question is whether she has been a contract employee under the Second Respondent or a direct employee under the First Respondent. In order to prove that she is under a valid contract for service between the Second Respondent and First Respondent there has not been any tangible evidence. Admittedly, her debut to the service in the CF Hospital under the Cordite Factory initially was not through the Second Respondent who claims himself to be a registered contractor which is only a plea without proof. It is pertinent to note that pleading *per se* is not proof. The different legal requirements and formalities for the creation and continuance of service as a Contractor, do not stand proved to have been complied with. Evidently she was given various training by the Cordite Factory Management for equipping herself to discharge the functions she is put on with her by way of her engagement in the CF Hospital. It is nobody's case that for her engagement through the previous Contractors they had valid license or contract with the First Respondent for the due engagement of contract employee in a valid contract for service. While in the case of previous contractors there is no case that they had obtained valid license for the purpose, the case of the Second Respondent is that he has obtained valid licenses but that is not substantiated. Mere *ipse dixit* is not enough to establish such a vital aspect. If the petitioner was a contract employee it is not for the Management to impart her training or other practices, coaching, which should have been the duty and function of the Contractor himself whose duty is only to provide supply of labour. As to the nature of the contract of service also there is no evidence. When with presence of some intermediary contractor she gains her access, yet it may appear to be a contract employment to her and accordingly she may hold out herself

to be so, then again there is nothing to divest her Status as a direct employee while the contract is still a ruse and a camouflage. The petitioner, therefore, is apt to be a direct employee. When engagement of the petitioner supervenes to be against sanctioned post of Ward Sahayaka, her continuance as such for longer years, here more than 3 years, the situation relegates to the realm of unfair labour practice being practiced upon her by the First Respondent Management in continuing her as badlies. In such a context, the decision in UMA Devi's case has no application. Back door entry has no relevance in the areas of public appointment. It is to be noted that she came in as Ward Sahayak, a sanctioned post, in which, she, when continues to be engaged there for more than 3 years, it is only apt to draw the deeming provision of her having acquired permanent status. When under a common complaint discernibly she is being terminated from service it is stigmatic and the same is not in compliance with Section-25F of the ID Act. So much so, while there need not be any hesitation to hold that she is apt to be a direct employee under the First Respondent and found so in having terminated her from service without compliance of Section-25F of the ID Act, the same amounts to retrenchment which is void ab initio. Therefore she is entitled to be reinstated into service forthwith with continuity of service and all attendant benefits including full back wages. Ordered accordingly.

12. The reference is answered accordingly.

A.N. JANARDANAN, Presiding Officer

Witnesses Examined :

For the 1st Party/Petitioner : WW1, Smt. R. Arthi

For the 2nd Party/
Management : MW1, Sri N.N.
Narendra

Documents Marked:

From the Petitioner's side

Ex.No. Date Description

Ex.W1 13.10.2010 Dismissal order of the petitioner

Ex.W2 20.01.2009 Para Medical Staff Training Certificate

Ex.W3 20.10.2010 Petitioner's Representation

Ex.W4 16.02.2008 First Aid Certificate approved by Ministry of Health

Ex.W5 08.04.2011 Petitioner's Representation to 1st and 2nd Respondent and ALC(C)

Ex.W6 18.01.2007 OFD letter pertaining outsourcing of deficit sanction

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| Ex.W7 | 01.12.2007 | strength Sanction and existing strength of CFA |
| Ex.W8 | 01.12.2009 | Sanction and existing strength of CFA |
| Ex.W9 | 08.07.2008 | Tender Notice pertaining to filling up of Sanction Strength (Ward Sahayaka) |
| Ex.W10 | 14.05.2011 | Work Order (Ward Sahayaka) |
| Ex.W11 | 19.01.2011 | Representation under RTI |
| Ex.W12 | 24.02.2011 | Reply to the representation under RTI by 1st Respondent admitting their mistakes |
| Ex.W13 | 08.12.2010 | ID Act-Conciliation proceeding Notice by ALC© |
| Ex.W14 | 14.01.2011 | Reinstatement of the order to the petitioner by CFA Management |
| Ex.W15 | 16.05.2011 | Conciliation proceedings of ALC (C) portraying agreement by CFA Management for reinstatement |
| Ex.W16 | 27.05.2011 | Pass (Permission for work as Ward Sahayaka) pertaining to reinstatement endorsed by CFA Management |
| Ex.W17 | 30.05.2011 | Petitioner's representation for Status Quo |
| Ex.W18 | 02.06.2011 | Postal A/D endorsed by CFA Management |
| Ex.W19 | 22.07.2011 | Muster-Roll for the month of May 2011 showing that petitioner had worked on 27th and 28th of May 2011 endorsed by CFA ma |
| Ex.W20 | 22/07.2011 | Wage-Roll for the month of May 2011 showing that petitioner had worked on 27th and 28th of May 2011 endorsed by CFA Management |
| Ex.W21 | 17.12.2010 | Circular issued by CFA Management pertaining to Minimum Wage of Rs. 206,80 to the petitioner |

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|--------|------------|--|----------------------------------|------------|--|--|
| Ex.W22 | 10.05.2010 | Circular issued by CFA Management pertaining to Minimum Wage | Ex.W37 | 29.01.2003 | Ordnance Factory Board's letter pertaining responsibility of 1st Respondent regarding Contract Labourers | |
| Ex.W23 | 09.05.2008 | Letter from DoPT regarding regularization | Ex W38 | 11.08.2009 | Reply to RTI by 1st Respondent regarding period of service of the petitioner | |
| Ex.W24 | 07.10.2009 | Ordnance Factory Board's letter pertaining Parliamentary assurance of Contract Labourers | Ex W39 | 12.01.2010 | OFB Board's letter pertaining responsibility of 1st Respondent regarding Contract Labourers | |
| Ex.W25 | 04.02.2010 | Ordnance Factory Board's letter pertaining Regularization | Ex.W40 | — | Copy of Attendance (more than 24 calendar months) register showing from 16.02.2008 to 09.09.2010 worked by petitioner, maintained by 1st Respondent (Total 32 months) | |
| Ex.W26 | 06.04.2010 | Ordnance Factory Board's letter pertaining (Parliamentary Committee) regarding Contract Labourers | Ex.W41 | — | Copy of day-wise attendance, countersigned by the 1st Respondent from 1st April 2010 to 9th October, 2010 (Totally 7 months) which also portrays that the petitioner was under the control of the 1st Respondent | |
| Ex.W27 | 30.08.2010 | Ordnance Factory Board's letter pertaining to the continuity of Contract Labourers | Ex.W42 | — | Copy of Wage Roll of the petitioner, endorsed by 1st Respondent | |
| Ex.W28 | 04.08.2010 | Letter by the (CFA Management) 1st Respondent showing the actual responsibility, welfare and supervising of Contract Labourers | Ex.W43 | 12.08.2009 | Copy of EPF Receipt of the petitioner endorsed by the 1st Respondent | |
| Ex.W29 | 23.04.2012 | Transfer Order of Dr. Thakur CMO/CFH | Ex.W44 | 13.07.2011 | Dy. Chief Labour Commissioner (C)'s letter regarding regularization of the petitioner | |
| Ex.W30 | 10.06.2011 | Complaint against Dr. Thakur CMO/CFH regarding sexual harassments by petitioner with evidence | Ex.W45 | 17.06.2011 | Ministry of Labour and Employment's letter regarding regularization of the petitioner | |
| Ex.W31 | 13.08.2011 | Defence Minister's letter regarding action against Dr. Thakur CMO/CFA regarding sexual harassments | Ex.W46 | 28.05.2011 | Representation by petitioner regarding Permanency | |
| Ex.W32 | 17.11.2011 | Ministry of Defence's letter to the petitioner regarding her representation to the PM, DARPAG (Public Grievance), Ministry of Health | Ex.W47 | 28.05.2011 | Representation by petitioner regarding permanency to the 1st Respondent | |
| Ex.W33 | 16.11.2011 | Ministry of Defence's/OFB Cell letter regarding action against sexual harassment | Ex.W48 | 04.06.2011 | Postal A/D endorsed by the 1st Respondent | |
| Ex.W34 | 28.09.2011 | Ministry of Defence's OFB Cell letter regarding action against sexual harassment | From the Management side: | | | |
| Ex.W35 | 26.11.2011 | Representation by petitioner to Ministry of Defence/Defence Secretary | Ex.No. | Date | Description | |
| Ex.36 | — | A/D Endorsed by OFB & CF Management | Ex.M1 | 26.05.2010 | Closing of Service Contract of M/s. Arokiadas Simon | |

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| Ex.M2 | 12.10.2010 | Request for replacement of the petitioner by staff of C.F. Hospital |
| Ex.M3 | 13.10.2010 | Request for replacement by the 1st Respondent |
| Ex.M4 | 21.04.2011 | Request for reinstatement into service by the petitioner to the 2nd Respondent |
| Ex.M5 | 28.05.2011 | Request to replace the petitioner by the 1st Respondent |
| Ex.M6 | 31.05.2011 | 2nd Respondent request to the petitioner. |

नई दिल्ली, 14 जून, 2013

का अ 1302.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, डीएमआरएसी लिमिटेड के प्रबंधत्रंत के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं-2, नई दिल्ली के पंचाट (संदर्भ संख्या 55/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 10/06/2013 को प्राप्त हुआ था।

[सं एल-42025/03/2013-आईआर (डीएस)]

जोहन तोपनो, अवर सचिव

New Delhi, the 14th June, 2013

S.O. 1302.—In pursuance of Section 2A(2) of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 55/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of The General Manager, DMRC Ltd. which was received by the Central Government on 10/06/2013

[No. L-42025/03/2013-IR(DU)]

JOHAN TOPNO, Under Secy.

ANNEXURE

**BEFORE DR. R. K. YADAV, PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. I,
KARKARDOOMA COURTS COMPLEX: DELHI**

I.D. No. 55/13

Sh. Digvijay Narayan Singh
S/o Sh. Ramadhar Singh,
R/o E-562, Gali No. 9,
West Vinod Nagar,
Delhi-110092.Workman

Versus

The General Manager,
DMRC Limited, Metro Bhawan,
13, Fire Brigade Lane,
Barakhamba Road,
Delhi-110001.
....Management

AWARD

A Station Controller/Train Operator joined Delhi Metro Rail Corporation Ltd. (in short the management) on 01.01.2010. He was confirmed in service on 01.04.2010. He was placed under suspension on several occasions, viz. 23.11.2010, 24.05.2011, 26.10.2012, 03.11.2012, 03.11.2012 and finally on 25.02.2013. He was served with charge sheets dated 01.02.2011, 18.05.2011, 27.05.2011 and 31.10.2012. As his replies were not found to be satisfactory, domestic enquiries were constituted from time to time and punishment of minor penalty of withholding of two increments without cumulative effect, reduction to lowest stage in the same time scale of pay were awarded vide orders dated 05.07.2011, 01.07.2011, 25.06.2012. Finally he was removed from service vide order dated 28.02.2013, by the Disciplinary Authority. He raised an industrial dispute under sub-section (2) of section 2A of the Industrial Disputes Act, 1947 (in short the Act).

2. Arguments were heard at the bar. Sh.H.S.Solanki, authorized representative, advanced arguments on behalf of the workman on maintainability of the dispute. My findings on issues involved in the controversy are as follows:

3. As record projects, dispute under reference was raised by the claimant, namely, Shri Digvijay Narain Singh under sub-section (2) of section 2A of the Act. Provisions of section 2A of the Act contemplates that any dispute or difference between the workman and his employer connected with or arising out of discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute, notwithstanding that no other workman nor any union of workman is party to the dispute. Language, used in section 2A of the Act, very clearly states that in order to make a dispute an industrial dispute, it must be sponsored by a union or a considerable number of workmen in the establishment of the management. However, any dispute between a workman and his employer, which is connected with or arising out of his discharge, dismissal retrenchment or termination shall be deemed to be an industrial dispute.

4. A long line of decisions, handed down by the Apex Court, had established that an individual dispute could not per se be an industrial dispute, but could become one if it was taken up by a trade union or a considerable number of workmen of the establishment. This position of law created hardship for individual workmen, who were discharged, dismissed, retrenched or whose services were otherwise terminated when they could not find support by a union or any appreciable number of workman to espouse

their cause. Section 2A was engrafted in the Act by the Amendment Act of 1965 and it has to be read as an extension of the definition of industrial dispute contained in clause (k) of section 2 of the Act. Thus by way of extension of definition of industrial dispute, by insertion of section 2A of the Act, the dispute of an individual workman connected with or arising out of his discharge, dismissal, retrenchment or otherwise termination of his service by his employer has been brought within the ambit of the Act.

5. Industrial workman has got a very restricted right to move an industrial court when his service conditions have been changed to his prejudice during pendency of an industrial dispute or he has been dismissed or discharged during such pendency, under section 33-A of the Act. He has a right to recover certain dues from his employer under section 33(C)(2) of the Act. An individual workman who had been thrown out of employment had to rely for redress only through aegis of the union or his co-workers where there was no union. Sometimes he found it hard to proceed further or get the union to take up his cause. Besides, there are industries where so far no union have been formed. Workers are still, in certain industries, unorganised. Enactment of section 2A of the Act was taken up by the Parliament solely with a view to modify the law to raise industrial disputes relating to discharge, dismissal, retrenchment or otherwise termination of services of the workmen.

6. Classification between workmen unaided by union or considerable number workmen and workman whose cause is espoused by a union or considerable number of workmen has been made by the legislature, when provisions of section 2A were brought on the Statute Book. Thus, it is evident that by way of extension of definition of industrial dispute relating to discharge, dismissal, retrenchment or termination of service of the workmen, Legislature provided remedy to the workmen who is unaided by a union or considerable number of workmen. Section 2A of the Act does not destroy the concept of industrial dispute and collective dispute and such concept still remains as a major class and in all other provisions of the Act. Consequently, it is evident that excepting the dispute relating to dispute of dismissal, discharge, retrenchment or otherwise termination of services of a workman, a dispute is to be espoused by the union or considerable number of workmen to reach the status of an industrial dispute.

7. Even in cases of dispute between a workman and his employer connected with or arising out of his discharge, dismissal, retrenchment or termination of his service, it has to pass through the procedure provided in the Act. For raising a dispute, an employee has to raise a demand on the employer and thereafter he has to raise the dispute before the Conciliation Officer, who had to enter in to the conciliation proceedings. In case conciliation proceedings fails, the Conciliation Officer submits his report to the

appropriate Government. On consideration of the report, so submitted by the Conciliation Officer, the appropriate Government has to form an opinion that an industrial disputes exists or is apprehended and refer that dispute to an industrial adjudicator under sub-clause (c) or (d), as the case may be, of sub-section (1) of section 10 of the Act. Procedure, referred above, would take considerable time and an employee had to wait for the decision of the appropriate Government, making reference to an industrial adjudicator for adjudication of the dispute. With a view to do away with this hardship, Legislature, vide Amendment Act No.24 of 2010, inserted sub-section (2) and (3) in section 2A and re-numbered original section as sub-section (1) in order to enable the workman to approach an industrial adjudicator for adjudication of his dispute, without it being referred by the appropriate Government. For sake of convenience, provisions of sub-section (2) and (3) of section 2A of the Act are reproduced thus:

- “(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may make an application direct to Labour Court or industrial Tribunal for adjudication of the dispute referred to therein after expiry of forty five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute and in receipt of such application, the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.
- (3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).”

8. Bare perusal of sub-section (3) of section 2A makes it clear that an application for adjudication of an industrial dispute, relating to discharge, dismissal, retrenchment or termination of his service can be moved by an employee before expiry of three years from the date of his discharge, dismissal, retrenchment or otherwise termination of service, as the case may be.

9. Provisions of sub-section (2) of section 2A of the Act empowers a workman to move an application before an industrial adjudicator for adjudication of his dispute, after expiry of 45 days from the date he made such application before the Conciliation Officer. On receipt of such application, the industrial adjudicator shall have

powers and jurisdiction to adjudicate the dispute as if it were a dispute referred to it by the appropriate Government, in accordance with provisions of the Act. Thus, it is evident that before moving an application before an Industrial Adjudicator, the workman has to approach the Conciliation Officer for conciliation of his dispute. In case no settlement is arrived at or conciliation proceedings goes beyond a period of 45 days from the date the workman had moved the application to the Conciliation officer, he may approach the Industrial Adjudicator for adjudication of his dispute, without being referred by the appropriate Government under the provisions of the Act. Consequently, it is evident that before approaching an Industrial Adjudicator, workman whose services have been discharged, dismissed, retrenched or terminated by his employer, shall have to approach the Conciliation Officer and wait for expiry of a period of 45 days, in case no settlement arrived between them. Obligation to approach the Conciliation Officer and allow him to enter into conciliation proceedings are mandatory. It is also obligatory on the workman to wait for a period of 45 days and only thereafter he can seek indulgence of an industrial adjudicator for adjudication of his dispute. In case he opts not to approach the Conciliation Officer or fails to wait for a period of 45 days from the date of moving his application, the Industrial Adjudicator will acquire no jurisdiction to entertain the dispute.

10. The claimant was removed from service on 28.02.2013, while he has filed the dispute before this Tribunal on 28.03.2013. This fact makes it clear that the claimant opted not approach the Conciliation Officer, after termination of his service by the management, not to talk of expiry of period of 45 days from the date he moved an application before that forum. Thus, it is evident that the Tribunal cannot invoke its jurisdiction to entertain the dispute, for want of compliance of the provisions of sub-section (2) of section 2A of the Act. Claimant filed his claim statement before this Tribunal, in a hurry. The Tribunal cannot invoke its jurisdiction to adjudicate the dispute under sub section (2) of section 2A of the Act.

11. Since the dispute has been raised at a premature stage, the Tribunal lacks jurisdiction to entertain it. Under these circumstances, the Tribunal is constrained to brush aside the claim statement made by Shri Digvijay Narain Singh. Accordingly, his claim statement is dismissed, being premature one. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 26.4.2013

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 14 जून, 2013

का अ 1303.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धा 17 के अनुपराण में केन्द्रीय सरकार एडमिन कामडेट डुन्डहेरा, गुडांव के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं-1, नई दिल्ली के पंचाट (संदर्भ संख्या 51/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 10/06/2013 को प्राप्त हुआ था।

[सं एल-42025/03/2013-आइ आर० (डी०य०)]

जोहन तोपनो, अवर सचिव

New Delhi, the 14th June, 2013

S.O. 1303.—In pursuance of Section 2A (2) of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 51/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of The Admn. Commandant, Dundahera, Gurgaon, which was received by the Central Government on 10/06/2013.

[F.No. L-42025/03/2013-IR(DU)]

JOHAN TOPNO, Under Secy.

ANNEXURE

**BEFORE DR. R. K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO. 1, KARKARDOOMA COURTS COMPLEX,
DELHI**

I.D. No.51/2011

Shri Rakesh S/o Sh.Jaggu Lal,
Rio VIII: Chachera, P.O.Shirshi,
Distt. Moradabad, U.P.Workman

Versus

The Admn. Commandant,
Station Headquarter,
Dundahera, Gurgaon,
Haryana.Management

AWARD

Shri Rakesh joined services of Admn. Commandant (in short the management) on 15-4-1998 as a workman for carrying out house keeping job in the canteen, at a consolidated salary of R~.2300.00 per month. His services were abruptly dispensed with on 8-11-2007. A notice of demand was served by him on the management on 2-01-2008. An industrial dispute was raised by the claimant before Central Government Industrial Tribunal No. II, New Delhi, using right available to him under the provisions of sub-section (2) of section 2-A of the Industrial Disputes Act, 1947 (in short the Act), without being referred for adjudication by the appropriate Government under sub-section (1) of section 10 of the Act.

2. Vide notification No. A-11016/3/2009-CLS-II, New Delhi dated 3-4-2013. Additional charge of the post of the Presiding Officer, Central Government Industrial Tribunal No. II, New Delhi, was assigned to the undersigned by the appropriate Government and thus, this case reached this Tribunal. for adjudication.

3. Arguments on maintainability of the dispute are heard at the bar. None came forward on behalf of the claimant to advance arguments. Shri Sanjiv Yadav, authorised representative, advanced arguments on behalf of the management. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follow :

4. As record projects, dispute under reference was raised by the claimant, namely, Shri Rakesh under sub section (2) of Section 2A of the Act. Provisions of section 2A of the Act contemplates that any dispute or once between the workman and his employer connected with or arising out of discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute, notwithstanding that no other workman nor any union of workman is party to the dispute. Language, used in section 2A of the Act, very clearly states that in order to make a dispute an industrial dispute, it must be sponsored by a union or a considerable number of workmen in the establishment of the management. However, any dispute between a workman and his employer, which is connected with or arising out of his discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute.

5. The term “industrial dispute” has been defined by sub-section (k) of section 2 of the Act to mean “any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of ,any person”. The definition of “industrial dispute” referred above, can be divided into four parts, viz. (1) factum of dispute, (2) parties to the dispute, viz.(a) employers and employers, (b) employer and workmen, or (c) workmen and workmen, (3) subject matter of the dispute, which should be connected with -(i) employment or non employment, or (ii) terms of employment, or (iii) condition of labour of any person, and (4) it should relate to an “industry”.

6. The definition of “industrial dispute” is worded in very wide terms and unless they are narrowed by the meaning given to word “workman” it would seem to include all “employers”, all “employments” and all “workmen”, whatever the nature or scope of the employment may be. Therefore, except in the case where there can be a dispute between the employers and employers and workmen and workmen, one of the parties to an industrial dispute must be an employee or a class of employees. The first point, therefore, to be noted, perhaps self evident, is that the phrase “employer and workmen”, the plural may include singular on either side or any permutation of singular or plural, the masculine including the feminine. In order, therefore, to determine as to whether

a controversy or difference or a dispute is an “an industrial dispute’ or not, it must first be determined whether the workman concerned or workmen sponsoring his cause satisfy the conditions of clause (s) of section 2 of the Act. Here in the case, the management does not dispute that the claimant is workman within the meaning of clause(s) of Section 2 of the Act.

7. A long line of decisions, handed down by the Apex Court, had established that an individual dispute could not per se be an industrial dispute, but could come one if it was taken up by a trade union or a considerable number of workmen of the establishment. This position of law created hardship for individual workmen, who were discharged, dismissed, retrenched or whose services were otherwise terminated when they could not find support by a union or any appreciable number of workmen to espouse their cause. Section 2A was engraved in the Act by the Amendment Act of 1965 and it has to be read as an extension of the definition of industrial dispute contained in clause (k) of section 2 of the Act. Thus by way of extension of definition of industrial dispute, by insertion of section 2A of the Act, the dispute of an individual workman connected with or arising out of his discharge, dismissal, retrenchment or otherwise termination of his service by his employer has been brought within the ambit of the Act.

8. Industrial workman has got a very restricted right to move an industrial court when his service conditions have been changed to his prejudice during pendency of an industrial dispute or he has been dismissed or discharged during such pendency, under section 33-A of the Act. He has a right to recover certain dues from his employer under section 33(C)(2) of the Act. An individual workman who had been thrown out of employment had to rely for redress only through aegis of the union or his co-workers where there was no union. Sometimes he found it hard to proceed further or get the union to take up his cause. Besides, there are industries where so far no union have been formed. Workers are still, in certain industries, unorganized. Enactment of section 2A of the Act was taken up by the Parliament solely with a view to modify the law to raise industrial disputes relating to discharge, dismissal, retrenchment or otherwise termination of services of the workmen.

9. Classification between workmen unaided by union or considerable number workmen and workman whose cause is espoused by a union or considerable number of workmen has been made by the legislature, when provisions of section 2A were brought on the Statute Book. Thus, it is evident that by way of extension of definition of industrial dispute relating to discharge, dismissal, retrenchment or termination of service of the workmen, Legislature provided remedy to the workmen who is unaided by a union or considerable number of workmen. Section 2A of the Act does not destroy the concept of industrial dispute and collective dispute and such concept still remains as a major class and in all other provisions of the Act. Consequently, it is evident that excepting the dispute relating to dispute of dismissal, discharge,

retrenchment or otherwise termination of services of a workman, a dispute is to be espoused by the union or considerable number of workmen to reach the status of an industrial dispute.

10. Even in cases of dispute between a workman and his employer connected with or arising out of his discharge, dismissal, retrenchment or termination of his service it has to pass through the procedure provided in the Act. For raising a dispute, an employee has to raise a demand on the employer and thereafter he has to raise the dispute before the Conciliation Officer, who had to enter in to the conciliation proceedings. In case conciliation proceedings fails, the Conciliation Officer submits his report to the appropriate Government. On consideration of the report, so submitted by the Conciliation Officer, the appropriate Government has to form an opinion that an industrial disputes exists or is apprehended and refer that dispute to an industrial adjudicator under sub-clause (c) or (d), as the case may be, of sub-section (1) of section 10 of the Act. Procedure, referred above, would take considerable time and an employee had to wait for the decision of the appropriate Government, making reference to an industrial adjudicator for adjudication of the dispute. With a view to do away with this hardship, Legislature, vide Amendment Act No.24 of 2010, inserted sub-section (2) and (3) in section 2A and re-numbered original section as sub section (1) in order to enable the workman to approach an industrial adjudicator for adjudication of his dispute, without it being referred by the appropriate Government. For sake of convenience, provisions of sub-section (2) and (3) of section 2A of the Act are reproduced thus:

“(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may make an application direct to Labour Court or industrial Tribunal for adjudication of the dispute referred to therein after expiry of forty five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute and in receipt of such application, the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).”

11. Bare perusal of sub section (3) of section 2A makes it clear that an application for adjudication of an industrial dispute, relating to discharge, dismissal, retrenchment or termination of his service can be moved by an employee before expiry of three years from the date of his discharge, dismissal, retrenchment or otherwise termination of service, as the case may be.

12. Provisions of sub section (2) of section 2A of the Act empowers a workman to move an application before an industrial adjudicator for adjudication of his dispute, after expiry of 45 days from the date he made such application before the Conciliation Officer. On receipt of such application, the industrial adjudicator shall have powers and jurisdiction to adjudicate the dispute as if it were a dispute referred to it by the appropriate Government, in accordance with provisions of the Act. Thus, it is evident that before moving an application before an Industrial Adjudicator, the workman has to approach the Conciliation Officer for conciliation of his dispute. In case no settlement is arrived, at or conciliation proceedings goes beyond a period of 45 days from the date the workman had moved the application to the Conciliation Officer, he may approach the Industrial Adjudicator for adjudicate of his dispute, without being referred by the appropriate Government under the provisions of the Act. Consequently, it is evident that before approaching an Industrial Adjudicator, workman whose services have been discharged, dismissed, retrenched or terminated by his employer, shall have to approach the Conciliation Officer and wait for expiry of a period of 45 days, in case no settlement arrived between them. Obligation to approach the Conciliation Officer and allow him to enter into conciliation proceedings are mandatory. It is also obligatory on the workman to wait for a period of 45 days and only thereafter he can seek indulgence of an industrial adjudicator for adjudication of his dispute. In case he opts not to approach the Conciliation Officer or fails to wait for a period of 45 days from the date of moving his application, the Industrial Adjudicator will acquire no jurisdiction to entertain the dispute.

13. As emerged out of the claim statement, services of the claimant was terminated on 8-11-2007. He served notice of demand dated 2-1-2008. Subsequently, he raised a dispute before the conciliation officer for redressal of his grievances. Claimant projects that the Conciliation Officer entered into conciliation proceedings and forwarded his failure report to the appropriate Government on 30-4-2009.

14. Out of facts presented by the claimant, it emerged over the record that his services were disengaged by the management on 8-11-2007. Notice of demand was served on the management on 2-1-2008. Consequently, it is clear that the claimant projects a case of termination of his services by the management on 8-11-2007. For approaching this Tribunal, under provisions of sub-section (2) of section 2A of the Act, limitation of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service of an employee has been imposed by the legislature. Thus, it is apparent that the claimant could have approached this Tribunal under sub-section (2) of section 2A of the Act till 7-11-2010 only. As is evident, claim preferred is beyond the period of limitation. Under these circumstances, this Tribunal cannot invoke its jurisdiction for adjudication of the dispute.

15. Since the dispute has been raised beyond the period of limitation, the Tribunal cannot entertain it. Under

these circumstances, the Tribunal is constrained to brush aside the claim statement, presented by the claimant. Accordingly, his claim is dismissed, being barred by time. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 15-5-2013

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 17 जून, 2013

कानून 1304.—ओद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब एण्ड सिन्ध बैंक के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 24/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/6/2013 को प्राप्त हुआ था

[सं. एल-12012/57/2009-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 17th June, 2013

S.O. 1304.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/2009) of the Central Government Industrial Tribunal/Labour Court-II, CHANDIGARH now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of PUNJAB & SINDH BANK, and their workman, which was received by the Central Government on 17.06.2013.

[No. L-12012/57/2009-IR(B-II)]

SHEESH RAM, Section Officer

नई दिल्ली, 17 जून, 2013

ओद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब एण्ड सिन्ध बैंक के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 20/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/6/2013 को प्राप्त हुआ था

[सं. एल-12012/58/2009-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 17th June, 2013

In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 20/2009) of the Central Government Industrial Tribunal/Labour Court-II, CHANDIGARH now as shown in the Annexure in the Industrial Dispute between the employers in relation to the

management of PUNJAB & SINDH BANK, and their workman, which was received by the Central Government on 17.06.2013.

[No. L-12012/58/2009-IR(B-II)]

SHEESH RAM, Section Officer

नई दिल्ली, 17 जून, 2013

ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब एण्ड सिन्ध बैंक के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 16/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/6/2013 को प्राप्त हुआ था

[सं. एल-12012/59/2009-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 17th June, 2013

In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16/2009) of the Central Government Industrial Tribunal/Labour Court-II, CHANDIGARH now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of PUNJAB & SINDH BANK, and their workman, which was received by the Central Government on 17.06.2013.

[No. L-12012/59/2009-IR(B-II)]

SHEESH RAM, Section Officer

नई दिल्ली, 17 जून, 2013

ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब एण्ड सिन्ध बैंक के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 19/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/6/2013 को प्राप्त हुआ था

[सं. एल-12012/60/2009-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 17th June, 2013

In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2009) of the Central Government Industrial Tribunal/Labour Court-II, CHANDIGARH now as shown in the Annexure in the Industrial Dispute between the employers in relation to the

management of PUNJAB & SINDH BANK, and their workman, which was received by the Central Government on 17.06.2013.

[No. L-12012/60/2009-IR(B-II)]

SHEESH RAM, Section Officer

नई दिल्ली, 17 जून, 2013

औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब एण्ड सिन्थ बैंक के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 18/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/06/2013 को प्रत्यक्ष हुआ था

[सं एल-12012/61/2009-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 17th June, 2013

In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (Ref. No. ID No.18/2009) of the Central Government Industrial Tribunal/Labour Court-II, CHANDIGARH now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of PUNJAB & SINDH BANK, and their workman, which was received by the Central Government on 17.06.2013.

[No. L-12012/61/2009-IR(B-II)]

SHEESH RAM, Section Officer

नई दिल्ली, 17 जून, 2013

औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब एण्ड सिन्थ बैंक के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 21/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/06/2013 को प्रत्यक्ष हुआ था

[सं एल-12012/62/2009-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 17th June, 2013

In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (Ref. No. ID No. 21/2009) of the Central Government Industrial Tribunal/Labour Court-II, CHANDIGARH now as shown in the Annexure in the Industrial Dispute between

the employers in relation to the management of PUNJAB & SINDH BANK, and their workman, which was received by the Central Government on 17.06.2013.

[No. L-12012/62/2009-IR(B-II)]

SHEESH RAM, Section Officer

नई दिल्ली, 17 जून, 2013

औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब एण्ड सिन्थ बैंक के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 22/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/06/2013 को प्रत्यक्ष हुआ था

[सं एल-12012/63/2009-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 17th June, 2013

In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (Ref. No. ID No. 22/2009) of the Central Government Industrial Tribunal/Labour Court-II, CHANDIGARH now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of PUNJAB & SINDH BANK, and their workman, which was received by the Central Government on 17.06.2013.

[No. L-12012/63/2009-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT: SRI A.K. RASTOGI, Presiding Officer.

Case No. ID No. 16/2009

Registered on 2.12.2009

Sh. Lal Chand S/o Sh. Suraj Bhan Yadav DB-1365,
Near A.D. Public School, Dabwa Colony, NIT Faridabad.

Applicant

Versus

1. The Zonal Manager, Zonal Office, Punjab and Sind Bank, Sector 17-B, Chandigarh.
2. The Branch Manager, Punjab and Sind Bank, Extension Counter, Prem Nagar, Karnal, Distt. Haryana.

Respondents

ID No. 18/2009**Registered on 2.12.2009**

Sh. Sunil Kumar, S/o Sh. A.L. Sharma, 145-A, Dayal Singh, Babyal Road, Ambala Cantt.

Applicant

Versus

1. The Zonal Manager, Zonal Office, Punjab and Sind Bank, Sector 17-B, Chandigarh.
2. The Branch Manager, Punjab and Sind Bank, Lead Bank Cell, Ambala Cantt, Haryana.

Respondents

ID No. 19/2009**Registered on 2.12.2009**

Sh. Charanjit Singh, S/o Sh. Kartar Singh, H.No. 14, Gol Market, Model Town, Panipat, Haryana

Applicant

Versus

1. The Zonal Manager, Zonal Office, Punjab and Sind Bank, Sector 17-B, Chandigarh.
2. The Branch Manager, Punjab and Sind Bank, Sonepat Distt. Haryana.

Respondents

ID No. 20/2009**Registered on 2.12.2009**

Sh. Shiv Kumar, S/o Sh. Agya Ram, C/o S.D. College, Ambala Cantt, Haryana.

Applicant

Versus

1. The Zonal Manager, Zonal Office, Punjab and Sind Bank, Sector 17-B, Chandigarh.
2. The Branch Manager, Punjab and Sind Bank, Jalmana, Distt. Karnal, Haryana.

Respondents

ID No. 21/2009**Registered on 2.12.2009**

Sh. Ramesh Kumar, S/o Sh. Gurdial, D-17, Narian Singh Park, Panipat.

Applicant

Versus

1. The Zonal Manager, Zonal Office, Punjab and Sind Bank, Sector 17-B, Chandigarh.
2. The Branch Manager, Punjab and Sind Bank, Extension Counter, Panipat.

Respondents

ID No. 22/2009**Registered on 2.12.2009**

Sh. Vijay Kumar S/o Sh. Tilak Raj, Street No. 6, Begu Road, Grewal Basti Sirsa, Haryana.

Applicant

Versus

1. The Zonal Manager, Zonal Office, Punjab and Sind Bank, Sector 17-B, Chandigarh.
2. The Branch Manager, Punjab and Sind Bank, Sirsa Distt. (Haryana).

Respondents

ID No. 24/2009**Registered on 2.12.2009**

Sh. Balbir Singh S/o Sh. Didar Singh, Village Barnala, PO. Dhankaar, Distt. Ambala, Haryana.

Applicant

Versus

1. The Zonal Manager, Zonal Office, Punjab and Sind Bank, Sector 17-B, Chandigarh.
2. The Branch Manager, Punjab and Sind Bank, Jalmana, Haryana.

Respondents

APPEARANCES

| | | |
|--------------------|---|-----------------------|
| For the workman | — | Sh. Vikram Bajaj Adv. |
| For the Management | — | Sh. J.S. Sathi Adv. |

AWARD

Passed on Feb. 13, 2013

Central Government vide Order No. L-12012/59/2009 (IR(B-II)), L-12012/61/2009 (IR(B-II)), 12012/60/2009 (IR(B-II)), 12012/58/2009 (IR(B-II)), 12012/62/2009 (IR(B-II)), 12012/63/2009 (IR(B-II)), 12012/57/2009 (IR(B-II)), all dated 9.11.2009 in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following industrial disputes for adjudication to this Tribunal.

ID No. 16/2009

Whether the action of the Zonal Manager, Punjab and Sind Bank, Zonal Office, Chandigarh in terminating the service of Sh. Lal Chand and temporary Peon was in violation of Section 25F of the ID Act? If so, what relief the workman is entitled to and from which date?

ID No. 18/2009

Whether the action of the Zonal Manager, Punjab and Sind Bank, Zonal Office, Chandigarh in terminating the service of Sh. Sunil Kumar a temporary Peon was in violation of Section 25F of the ID Act? If so, what relief the workman is entitled to and from which date?

ID No. 19/2009

Whether the action of the Zonal Manager, Punjab and Sind Bank, Zonal Office, Chandigarh in terminating the service of Sh. Charanjit Singh a temporary Peon was in violation of Section 25F of the ID Act? If so, what relief the workman is entitled to and from which date?

ID No. 20/2009

Whether the action of the Zonal Manager, Punjab and Sind Bank, Zonal Office, Chandigarh in terminating the service of Sh. Shiv Kumar a temporary Peon was in violation of Section 25F of the ID Act? If so, what relief the workman is entitled to and from which date?

ID No. 21/2009

Whether the action of the Zonal Manager, Punjab and Sind Bank, Zonal Office, Chandigarh in terminating the service of Sh. Ramesh Kumar a temporary Peon was in violation of Section 25F of the ID Act? If so, what relief the workman is entitled to and from which date?

ID No. 22/2009

Whether the action of the Zonal Manager, Punjab and Sind Bank, Zonal Office, Chandigarh in terminating the service of Sh. Vijay Kumar a temporary Peon was in violation of Section 25F of the ID Act? If so, what relief the workman is entitled to and from which date?

ID No. 24/2009

Whether the action of the Zonal Manager, Punjab and Sind Bank, Zonal Office, Chandigarh in terminating the service of Sh. Balbir Singh a temporary Peon was in violation of Section 25F of the ID Act? If so, what relief the workman is entitled to and from which date?

In all the above Industrial disputes common questions of law and facts are involved hence, they are being decided by this common award.

According to the claimants they had been appointed by the respondent-Bank as Peons at various branches. Claimants Lal Chand of ID No. 16/2009 and Shiv Kumar of ID No. 20/2009 from 1993, Vijay Kumar of ID No. 22/2009 from 1985, Balbir Singh of ID No. 24/2004 from 1993 and others Sunil Kumar, Charanjit Singh and Ramesh Kumar of ID No. 18/2009, 19/2009 and 21/2009 respectively alleges to be in the continuous employment of the bank from 1998. During the pendency of certain reference proceedings before the Hon'ble CGIT-cum-Labour Court, Chandigarh a settlement was arrived at between the management of Punjab and Sind Bank (in short management) and their workmen as represented by the All India Punjab and Sind Bank Staff Organization (in short staff organization) on 16.10.1992. This settlement was subsequently modified and another settlement dated 13.8.1994. was signed between the 'management' and the 'staff organization'. On the basis of these settlements the bank instead of giving regular appointments to the claimants prepared a panel/list of temporary peons at Zonal Office level and directed the branches to engage the services of temporary peons from the said list. However even before the settlement dated 13.8.1994 some of the claimants had been given appointment as temporary peons though they were already continuing as Peon in their respective branches. The claimants worked continuously as Peon in their respondent-bank with effect from their date of engagement till their termination in 2002 when they were told by the concerned Branch Manager that their services were not required. It has been alleged by the claimants that the post from which they were relieved in 2002 were permanent posts in the Man Power Planning Returns of the concerned branch and they were relieved by the concerned Branch Manager at the instance of Zonal Manager, Zonal Office, Sector 17-B, Chandigarh in an arbitrary manner and in violation of the settlements referred above. They were not paid any retrenchment compensation and were not issued any notice, though they had continuously worked for more than 240 days in the preceding calendar months as on the date of their relieving. The claimants thus have alleged the violation of Section 25F of the Act. They have prayed for reinstatement with of service and back wages.

The claim was contested by the management. According to the management the claimants had been engaged intermittently to meet the exigencies without following the established procedure for making public appointment. They had been engaged from time to time on the fixed tenure of 60 days subject to the condition that their services would be of temporary nature and they could be relieved within the stipulated period without assigning any reason. After having been relieved from service on expiry of the stipulated period they were engaged afresh upon their request and some break spanned more than six

months even. The action of the management does not amount to retrenchment in view of Section 2(oo) (bb) of the Act. It was denied that the workmen continued against permanent vacancy and they had worked continuously during their engagement. In ID No. 22/2009 regarding Vijay Kumar it was also pleaded that service at different branches cannot be clubbed together. It was further pleaded that practice of making temporary engagement without following procedure had been severely deprecated hence, it was decided by the bank to dispense with the services of all the temporary peons and resultantly services of the temporary peons/casual workers engaged in all the zones of the bank were terminated. According to the management the claimants are not entitled to any relief.

The claimants filed rejoinders to state that they had been appointed against permanent vacancy and they continued in service with intermittent arbitrary breaks introduced by way of unfair labour practice. The provisions of Section 2 (oo) (bb) of the Act are not attracted to their case.

In each ID the concerned workman examined himself and also a retired officer of the bank—Iqbal Singh as his witness while on behalf of the management B.S. Bhatia was examined in each case.

As per affidavit of workmen-witness Iqbal Singh the posts against which workmen had been employed on temporary basis were permanent posts but the appointment has been shown as temporary and persons shown to be employed on temporary basis by showing notional breaks were being continued by the bank for years together in its service and those permanent posts were so shown in the Man Power Planning Returns of the concerned branches. However their services were subsequently terminated to pre-empt their regularization. In cross-examination he however, stated that the workmen used to be employed against temporary post.

Management-witness B.S. Bhatia during cross-examination stated that the workmen had not been recruited as per procedure and were in the employment intermittently and for a specified period varying from 30, 60 and 90 days. In reply to a question he answered that the record relating to the attendance and payment of wages to the workmen is maintained in the branch office. He admitted that a panel of the temporary peons had been prepared and the names of the workmen were in the panel. He was unable to say whether the workmen completed 240 days of service in a year or not. As per his statement Man Power Planning Returns of the branch office relating to the period of the employment of the claimants is not required to be maintained at the branch office hence, it is not available in the branch and Zonal Office. In view of this statement of the

management-witness the claimant moved an application on 18.4.2011 for a direction to management to produce Branch Manager along with certain records inter alia the record pertaining to the number of days for which the workmen were engaged by the branch. Despite the sufficient time given to the management the management neither filed any reply to the application nor produced the documents. Vide order dated 31.10.2011 the application of the claimant was allowed and the management was directed to produce the record mentioned in the application on the next date but the management did not comply the order and did not produce the record.

I have heard the learned counsel for the claimants and perused the case law cited by the learned counsel for the parties. I also went through the evidence on record.

It is important to note that the reference is about the violation of Section 25F of the Act in termination of the service of the claimants. Claimants are claiming their reinstatement with continuity of service and back wages. They are not demanding regularization.

The learned counsel for the claimants argued that the claimants have been in the employment of the management since long. They are in the panel of temporary peons but in 2002 they were relieved on various dates and though they had worked for more than 240 days in 12 calendar months preceding the date of their termination, yet provisions of Section 25F of the Act were not complied with the management did not produce the relevant record despite the order of the Tribunal hence, adverse inference should be drawn against the management.

The management did not deny the employment of the claimants but its plea is that they had been engaged intermittently to meet the exigencies without following the established procedure for making public appointment. They had been engaged on a fixed tenure of 60 days or 90 days subject to the condition that their services would be of temporary nature and they could be relieved within the stipulated period without assigning any reasons and after having been relieved from service on expiry of the stipulated period they were engaged afresh upon their request. The action of the management does not amount to retrenchment and comes within the exception provided in Section 2 (oo) (bb) of the Act.

The first question is whether termination of the services of the claimants is covered by Section 2 (oo) (bb) of the Act. Some of the claimants have filed their appointment letters. In ID No. 18 of 2009, Annexure W1 to W3 of the claim statement, in ID No. 20 of 2009 Annexure W4 and W5 of the claim statement and in ID No. 24/2009 Annexure W3 of the claim statement are the appointment letters of claimant Sunil Kumar, Shiv Kumar and Balbir Singh respectively.

The appointment letter shows that these claimants had been engaged for 30 or 60 dyas at a time; but the practice of the management becomes clear from the evidence of workmen-witness Iqbal Singh and also from the some of the documents available on the record of some IDs. Workmen-witness Iqbal Singh is a retired officer in Junior Management Scale I of the Bank. He served the management for about 36 years. He has deposed in his affidavit that claimants have been shown to have been employed on temporary basis by showing notional breaks and they continued for years together in service. Annexure W6 of the claim statement in ID No. 16/2009 and Annexure W7 and W8 of the claim statement in ID No. 21/2009 corroborate the statement of Iqbal Singh. These are the letters from the Zonal Office Haryana of Punjab and Sind Bank to the concerned Branch Manager. In these letters the concerned Branch Managers have been advised to re-engage the service of the concerned claimant for another 60 days after completion of 60 days service and after giving break of two working days. It is also mentioned in the letters that the Branch Manager may continue this process in future also. It is thus clear from the evidence on record that the break in the service of the workman was of artificial nature. As was observed by a Division Bench of Allahabad High Court in Shailendra Nath Shukla Vs. Vice-Chancellor Allahabad University 1987 LAB. IC 1607 sub-clause (bb) is in the nature of the exception to Section 2 (oo) and has to be construed strictly and in favour of the workmen, as the entire object of the Act is to secure a just and fair deal to them. The nature of employment must be judged by the nature of duties performed by the workman and not on the basis of the letter issued by the employer. Section 2(oo) (bb) cannot be extended to cases where the job continues and the employee's work is also satisfactory, but periodical renewals are made to avoid regular status to the workman, as it would be an unfair labour practice.' It was also observed that if contractual employment is resorted to as a mechanism to frustrate the claim of the employee to become regular or permanent against the job which continues or the nature of duties is such that the colour of a contractual agreement is given to take it out from Section 2(oo) (bb) then such agreement cannot be regarded as fair or bona fide.

Similarly the Hon'ble Punjab and Haryana High Court in Balbir Singh Vs. Kurukshetra Central Cooperative Bank Limited (1990) 1 LLJ 443 pointed out that Clause (bb) of Section 2 being in the nature of an exception cannot be given a meaning which will nullify or curtail the ambit of the principal clause, because it is not intended to be an outlet for unscrupulous employers to shunt out workmen in the garb of non-renewal of their contracts, even if the work subsist.

Regarding Vijay Kumar of ID No. 22/2009 the management has taken a plea that service in different

branches cannot be clubbed together for ascertaining the length of service. It is important to note that the claimant Vijay Kumar has alleged in his claim statement that he was in the employment of the bank since 1985 and he had been appointed at Sirsa and was terminated also from that branch. The management plea is not specific. It has not been specifically pleaded that the workman Vijay Kumar had worked at different branches and what were those branches. Hence the management plea being vague cannot be accepted that the concerned workman Vijay Kumar remained employed at different branches during his period of employment. It is important to note that in his statement during cross-examination the workman has alleged his employment in January 1996.

The claimants have been employed as temporary peons. The nature of duties of a peon is of continuous nature. The letters Annexure W6 of the claim statement of ID No. 16/2009, Annexure W1 to W3 and W8 in ID No. 18/2009, Annexure W4 and W5 in ID No. 20/2009 Annexure W7 and W8 in ID No. 21/2009 and Annexure W3 in ID No. 24/2009 shows that related claimant Lal Chand from 1998, Sunil Kumar from 1989, Shiv Kumar from 1993, Ramesh Kumar from 1998 and Balbir Singh from 1993 were in the employment of bank. The length of service of the claimants shows that their job was of continuous nature and was not seasonal or casual. Hence the management's plea that it was a contractual employment cannot be accepted. Obviously the termination of the services of the claimants in 2002 is retrenchment and is not covered by Clause (bb) of Section 2 (oo) of the Act.

Undisputedly the services of the claimants were terminated without notice, notice pay or retrenchment compensation as provided in Section 25F of the Act. Management's plea that the termination was not retrenchment has already been repealed above. The question therefore comes for consideration whether the claimants are entitled to the protection of Section 25F of the Act. They are entitled to the protection of the said provision if they have been in continuous service for not less than one year. As per definition clause contained in Section 25B of the Act a workman shall be deemed to be in continuous service for a period of one year if he during a period of 12 calendar months preceding the date of his termination has worked for not less than 240 days. Though claimants in the present cases have claimed their continuous employment from the date of engagement till the termination of their services, but they have specifically pleaded also that they had continuously worked for more than 240 days in 12 calendar months preceding their termination. Their working for 240 days in the preceding 12 calendar months has not been specifically denied by the management in its written statement. In this regard it is also important that through an application dated 18.4.2011

the workmen had summoned inter alia the record pertaining to the numbers of days for which the claimants were engaged by the concerned branch. As stated above the application was allowed on 31.10.2011 but the management did not produce the record. The inevitable interference is that if the record had been produced by the management it would have supported the claimants' case. Under the circumstances it cannot be denied that the claimants have been in continuous services for not less than one year before their retrenchment hence, they were entitled to the protection of Section 25F of the Act.

It is now well settled that the termination of the service in violation of Section 25F of the Act is void ab initio and non-est.

The claimants therefore are entitled to reinstatement with continuity of service but I do not find them entitled to back wages. I have gone through the case law cited by the counsel for the claimants regarding the back wages. The learned counsel has cited—

1. 2012(2) SCT 263
2. 2012 LAB. IC 860
3. JT 2002(2) SC 587
4. 2005(4) SCT 390

But the Hon'ble Apex Court in General Manager Haryana Roadways Vs. Rudhan Singh 2005 III LLJ 4 has held "There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of services was in violation of Section 25F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment, i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job, and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated he may be awarded full or partial back wages keeping the view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete priod, i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration, is the nature of employment. A regular service of permanent

character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."

In the case in hand there is no evidence to show that the claimants had been appointed after proper advertisement of the vacancy or inviting applications from the Employment Exchange. Though it is true that their names find place in the panel of temporary peons and some of them have filed their appointment letter also but that cannot be accepted as proof of appointment of the claimants in due process for recruitment. It is clear from the record that their appointment was temporary.

From the cross-examination of claimants it appears that Lal Chand of ID NO. 16/2009 has been earning his livelihood by selling vegetables and has been earning Rs. 2500 to 3000 per month, Sunil Kumar of ID No. 18/2009 by serving at a shop is earning Rs. 3600 per month, Charanjit Singh of ID No. 19/2009 by doing the job of night watchman has been earning Rs. 2000 to 3000 per month, Shiv Kumar of ID No. 20/2009 working as salesman has been earning Rs. 2800 to 3000, Ramesh Kumar of ID No. 21/2009 by running a tea stall has been earning Rs. 4000 to 5000 per month, Vijay Kumar of ID No. 22/2009 has been supplying bread and earning Rs. 3500 to 40000 per month and Balbir Singh of ID No. 24/2009 is getting Rs. 3000 to 3500 per month by serving as chowkidar. The appointment letters Annexure W1 to W3 available on the record of ID No. 18/2009, Annexure W4 and W5 on the record of ID No. 20/2009 and Annexure W3 of ID No. 24/2009 shows that the workman had been employed at a salary of Rs. 815 per month plus DA. Clearly the claimants were gainfully employed after their disengagement. Under the circumstances I do not find them entitled to back wages.

On the basis of the above going discussion the references are decided in favour of the claimants. The management is directed to take the claimants on duty within one month from the date of publication of award. Let two copies of the award be sent to the Central Government and one copy each to District Judge Chandigarh, Karnal (Haryana), Ambala Cantt. (Haryana), Sonepat (Haryana), Panipat (Haryana), Sirsa (Haryana) and Jalhana (Haryana) for information and further necessary action. One copy each of the award be placed on the record of ID No. 16/2009, 18/2009, 19/2009, 20/2009, 21/2009, 22/2009 and 24/2009.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 17 जून, 2013

कानून 1305.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केंद्रीय सरकार नव मंगल परन न्यास के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच

अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ संख्या सी०आर० 12/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 15/06/2013 को प्रप्त हुआ था ।

[सं एल-45011/01/2004-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 17th June, 2013

S.O. 1305.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (Ref. No. CR 12/2005) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of New Mangalore Port Trust, and their workman, which was received by the Central Government on 15.06.2013.

[No. L-45011/01/2004-IR(B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Date: 4th June 2013

PRESENT: Shri S. N. NAVALGUND, Presiding Officer

C R NO. 12/2005

I Party

1. The Gen. Secy., NMP Staff Assn., Nr. NMPT Admn. Bldg. Panambur, Mangalore-10.
2. The Gen. Secy., NMPDWU, Market Bldg, Panambur, Mangalore-10.
3. The Gen. Secy., KDGWU, Opp. AO Bldg., Panambur, Mangalore-10.

Party II

The Chairman, New Mangalore Port Trust,
Panambur, Mangalore-575 010

APPEARANCES:

- | | | |
|----------|---|---|
| I Party | : | Shri D R V Bhat/Muralidhara Advocate |
| II Party | : | Shri Ramesh Upadhyaya Advocate |

AWARD

1. The Central Government vide order No. L-45011/1/2004-IR(B-II) dated 17.01.2005 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) made this reference for adjudication with the following schedule:

SCHEDULE

"Whether the action of the management of New Mangalore Port Trust, Panambur, Mangalore in denying overtime allowance at double the rate to Class III and IV employees, drawing above Rs. 5,500 is legal and justified? If not, what relief the workmen are entitled to?"

2. On receipt of the reference while registering it in CR 12/2005 when the notices were issued to both the sides the I Party Nos. 1, 2 and 3 as well as II Party entered their appearance through their respective advocates and I Party Nos. 1, 2 and 3 filed Claim Statements on 04.07.2005 and 29.07.2005 and II Party filed their Counter Statement on 28.11.2005 respectively.

3. In the claim statements filed by the I Party Nos. 1, 2 and 3 which are almost similar, it is claimed the New Mangalore Port Trust is a Major Port constituted under the Major Port Trust Act, 1963 and the relevant rules there under which was originally run by the Government of India, Department of Surface Transport and that it has got two categories of employees i.e., employees working on Administrative Side and the Employees working in Port and Dock side and as the II Party denied the Over Time Allowance at double the hourly rate to Administrative and Port Employees drawing basic pay of Rs.5,550 and above, whereas the Dock Workers irrespective of their basic pay getting their Over Time Allowance at double the hourly rate and as this Over Time Allowance at double the hourly rate being arbitrarily denied to the workers at Port and Administrative side drawing basic of Rs.5,550 and above per month this is clear case of discrimination brought about by the management in between its employees. It is further claimed the payment of Over Time Allowance has a reference in the wage revision committee recommendations in Port and Dock workers at the Major Ports in January 1977 irrespective of their nature of work under clause 8.39 of the settlement and that subsequently the settlement was entered into between the II Party Management and five major federations and also the I Party Union and various claims of the workmen under various heads before the Chief Labour Commissioner (C), New Delhi in respect of Industrial Dispute raised by the five federations in respect of an Industrial Dispute raised by the five federations operating in Major Ports and Dock Labour Boards such as Bombay, Calcutta, Madras, Vishakapatnam, Cochin, Mormu Goa, Kandla, Paradip, Tuticorin, New Mangalore and Jawaharlal Nehru Port over payment of wages, revision of wages and other allowances and as per Para 27 of the said settlement it is evident that 24 points have been sanctioned in Annexure-I and that some of them have been covered by the way of the said settlement and others which have not been covered under the National Level and Local level will be discussed at the concerned level in the event of non settlement, the concerned

issue will be referred for adjudication as acceptable to the parties. Therefore, the claim of the I Party workmen to enhance the payment of Over Time Allowance to the Port and Administrative side drawing the basic pay of Rs. 5550 and above to double the hourly rate from single hourly rate to bring parity and equality in between the employees working in Port and Administrative side irrespective of the pay drawn by them is legitimate and genuine. It is also claimed since there was no parity in payment of double Overtime allowance between the employees drawing the basic pay below Rs. 5550 p.m. and above Rs. 5550 p.m., the Union straightaway entered into a dialogue with the management to settle the said difference and disparity in payment of over time allowance and categorising them into two categories based on the Basic Pay of the Employees and as the management illegally refused to concede to the local legal demand from the workmen they had no other option but to resort to use them weapon of go slow and stopping the production activities, which affected the functioning of the Port, the Assistant Labour Commissioner (C), Hubli at the instance of the management intervened and after several rounds of talk and detailed discussions resolved that "In the event if the Overtime benefit at double the hourly rate is paid to the employee working in other ports specifically in the nearby Mormugao Port the II party management agreed to extend similar benefits to its employees also" and with this proposal the management and union representatives agreed to resolve the main demand raised by the four trade unions on payment of Overtime allowance at double the hourly rates as is being paid to Class III and IV employees of the Mormugao port and it was also agreed that a team comprising of one representative of all the four unions each with Deputy Conservator, One Finance Officer and Law Officer shall go to the Mormugao Port and shall ascertain the position regarding the payment of overtime allowance and the terms and conditions including the manning pattern under which this is paid and accordingly a team of representatives consisting of three union representatives as well as management and other representatives i.e. Deputy Conservator, Accounts Officer and Assistant Law Officer went to Mormugao Port on 15.11.1999 and on inspection and verification found that an order was passed on 04.08.1967 by virtue of which the overtime allowance was being paid at double the hourly rate based on the basic pay plus other allowances including the HRA for the work done in excess of 9 hrs. a day or 48 hrs. a week irrespective of the scale of pay or basic wages and the team collecting the said order returned and the union insisted the II Party to implement the similar payment pattern of overtime allowance but surprisingly the management did not implement the similar payment pattern of Overtime Allowance and thereby illegally denied the legal claim. It is further claimed subsequently once again a wage settlement was entered into between the II Party management and five federations on 02.08.2000 effective from 01.01.1997

provisionally and infact effectively from 01.01.1998 and as per Clause 19 of the said settlement if any employee is asked by the management to work beyond the prescribed hours, Overtime Allowance will be paid as per the relevant laws governing the payment of this allowance and full payment will not be denied but inspite of it the management did not bother to pay the Overtime Allowance at full rate to the Dock, Port and Administrative employees drawing basic pay of Rs. 5550 and above and being aggrieved by the same Unions served a strike notice on the management on 06.05.2003 with several other demands and in that regard though the demands were discussed before the Regional Labour Commissioner (C), Bangalore the issue of Overtime allowance was sidelined by the management under the guise that the provisions of Minimum Wages Act are not applicable to it and the workmen are not entitled for Overtime Allowance at double the hourly rate, as such the I Party Union constrained to raise an Industrial Dispute in this regard before the Assistant Labour Commissioner (C), Managalore and as he submitted failure report it resulted in this reference by the Central Government for adjudication. It is further claimed that there is no reason for the II Party management to deny the Overtime Allowance to its employees whose Basic Pay is Rs. 5550 and above and it is clear case of discrimination and they are entitle for double the hourly wage.

4. The II Party in its Counter Statement opposed this claim contending that the persons working as Registered Cargo Handling Workers are being governed by the provisions for New Mangalore Port Cargo Handling workers (Regulation of Employment) Scheme, 1990 and the settlement concluded by the workers union and the management regarding their service conditions from time to time they are not coming under the schedule of the employees of the board prepared every year under Section 23 of Major Port Trust Act, 1963 as such the rules relating to the scheduled of employees of the port are not applicable to the Cargo Handling Workers working under the scheme as such there is no discrimination. It is also contended Clause 8.39 referred by the I Party Union is pertaining to the Wage Revision Committee's recommendation of 1977 and not of the settlement referred by the union same is not applicable and their claim to enhance the overtime allowance from single to double the hourly rate is not tenable under the relevant rules. It is also contended the I Party Union is represented by the All India Port and Dock Workers' Federation which is a signatory to the settlement dated 06.12.1994 on Wage Revision of Port and Dock Workers' of India wherein Annexure-IV, Item No. 7 deals with the demand for payment of Overtime Allowance at double the ordinary rate wages without any ceiling limit is shown as unsettled and named as local and if the issues are not settled at local level discussion such issues may be referred for arbitration or adjudication as acceptable to the parties and this issue

was being discussed with the workers union and the existing rate of overtime allowance was found to be correct and in accordance with the terms of earlier settlement as such the said issue was not referred to arbitration or adjudication by them. It is further contended the Assistance Labour Commissioner (C), Hubli had intervened to resolve certain Industrial Disputes *i.e.* stoppage of work by section of marine staff of the port for introducing changes in manning scales for operations of tugs, launches and engagement of private parties by MPRL to provide mooring services for berthing oil tankers at virtual Jetty and consequential suspension of erring employees as such it has nothing to do with the demand of overtime allowance at double the hourly rate though this item was added later at the time of conciliation and the I Party Union has conveniently quoted only a portion of the settlement and that too by changing its contents suiting its requirements, whereas, Clause 4 of the settlement dated 04.11.1999 referred to by the I Party Union reads as follows "Both management and union representatives agree to resolve the main demand by the four unions *i.e.* Payment of overtime allowance at double rate as is being paid to the Class III and IV of the Mormugao Port. A team comprising representatives of all the four unions with Deputy Conservator, One Accounts Officer and Law Officer will go to Goa and ascertain the terms and conditions including manning pattern under which way this is paid and thereafter this issue will be discussed and settled expeditiously" and accordingly a team visited Mormugao Port Trust but there was no agreement to pay overtime allowance at double the hourly rate if such payment is existing in Mormugao Port Trust. It is further contended the contention of the I Party workman that according to Clause 19 of the settlement dated 02.08.2000 the workmen irrespective of the basic pay are entitled to get the overtime allowance at double the hourly rate as is being paid to Dock, Port and Administrative employees working at various other ports are totally incorrect but it provides for payment of Overtime Allowance to employees who are asked to work beyond the prescribed working hours as per the prevailing laws governing the payment of said allowance and full payment would not be denied *i.e.*, overtime allowance payment shall be regulated in accordance with the relevant laws governing the payment of said allowance and it shall be paid in full and that its payment of Overtime Allowance to its employees is in accordance with the Clause 19 of wage settlement dated 02.11.2000 both in letter and spirit and it does not amount to discrimination and they are not entitled for double the hourly rate as claimed.

5. After completion of the pleading when the II Party was called upon to adduce evidence to justify its action in denying overtime allowance at double the hourly rate to Class III and IV employees drawing wages above Rs. 5550 the learned advocate appearing for the II Party examined Jeevan Prakash, Assistant Law Officer as MW

1 and got exhibited extract of clause 5 from its schedule of employees as on 01.04.2004 and reply received by Chairman, NMPT, Mangalore from the Managing Director, Indian Ports Association dated 06.05.2004 as Ex M-1 and Ex M-2. *Inter alia*, the learned advocate appearing for I Party No. 1 while filling the affidavit of Subash Katil, General Secretary, New Mangalore Port Staff Association examining him on oath as WW 1 got exhibited Ex W-3 to Ex W-21 the detailed description of which are narrated in the annexure and he had also got exhibited Ex W-1 and Ex W-2 the detailed description of which are narrated in the annexure in the cross-examination of MW 1, whereas, the learned counsel appearing for I Party No. 2 and 3 while filling the affidavit to Vinay Prasad Ahsirwad, General Secretary, New Mangalore Port and Dock Workers Union examining him on oath as WW 2 got exhibited Photostat copies of two settlements dated 06.12.1994 and 02.08.2000 as Ex W-22 series.

6. With the above pleadings, oral and documentary evidence brought on record by both the sides, the arguments addressed by learned advocates were heard.

7. On appreciation of the pleadings, oral and documentary evidence brought on record by the parties in the light of the arguments addressed by the learned advocates. I have arrived at conclusion the action of the management of New Mangalore Port Trust, Panambur, Mangalore in denying overtime allowance at double the rate of Class III and IV Employees, drawing salary above Rs. 5,500 is not legal and justified and they are entitled to Overtime Allowance at double the rate for the following reasons:

REASONS

8. The learned advocate appearing for the II Party in his arguments addressed that New Mangalore Port Trust being an autonomous body/board constituted under the Major Port Trust, 1963 allowances are paid as per Para No. 5 (a) (ii) of the schedule of employees extract of which is produced at Ex. M-1, as such they cannot claim overtime allowance par with Cargo Handling workers as such their claim is not legal and justified. He also urged that these two unions raising the dispute were not parties to the settlement such demand/reference and as they also failed to produce any evidence their union being majority union to represent in settlement they have no locus standi to raise such dispute. *Inter alia*, it is argued by the learned advocate appearing for I Party No. 1 that as per Para 27 of memorandum of settlement dated 06.12.1994 copy of which is produced at Ex. W-22 the points are not covered under the said settlement they have to be settled at the local levels and in the event of same could not be resolved such issues can be referred for adjudication, or arbitration as acceptable to the parties this dispute raised by the aggrieved at the local level and consequent to its failure the reference by the competent government is just and proper and this has to be adjudicated by this tribunal. Since in the

memorandum of settlement dated 06.12.1994 the copy of which is produced at Ex. W-22 under clause 27 as urged by learned advocate appearing for I Party No. 1 the points not covered in the settlement the details of which are mentioned in the Annexure-IV to the settlement are required to be settled locally and in the event they could not be settled amicably they have to be referred for adjudication or arbitration as acceptable to this parties, the workmen aggrieved in respect of the over time allowance were entitle to raise the issue locally and on its refusal to settlement, they have every right to get it adjudicated by way of reference from the competent government as such only becuase in the schedule of employees the management restricted the Overtime Allowance to single hourly rate to employees drawing basic pay of Rs. 5550 and above it cannot be said that this is not a subject matter to be adjudicated in a legally made reference by the competent government. Absolutely no reasons are coming forth either in the settlement itself or in the claim statement or evidence adduced by the management through MW 1 for making such a difference/discrimination between the employees drawing basic pay below and above Rs. 5550. Absoloutely no evidence is adduced this difference/discrimination is made subject to a settlement arrived at between the management and the union. Though MW 1 denied the suggestion Ex M-1 schedule of employees is not based upon any settlement between the management and the union he having failed to produce any settlement in that regard it is not possible to accept that the terms and conditions under Ex M-1 being the result of settlement between the managment and the union. Since as per Para 19 of the memorandum of settlement dated 02.08.2000 relating to overtime allowance if any employee is asked by the management to work beyond prescribed working hours overtime allowance has to be paid as per the relevant law governing and full payment will not be denied and Section 59 of factories act provides for payment of double the hourly wages for overtime work and as per Ex W-6 the NMPT workshop Panambur is registered under the Factories Act the II Party is not legal and justified in restricting this allowance to single hourly to the employees drawing the salary/wages more than Rs. 5550. As already advereted to by me above neither in the schedule of employees nor in the counter statement nor in the evidence of MW1 justification/reasons for such discrmination being illustrated, I have arrived at conclusion the action of the management of New Mangalore Port Trust, Panambur, Mangalore in denying overtime allowance at double the rate to Class III and IV Employees, drawing Rs. 5,500 and above is not legal and justified and that they are also entile for double the rate. In the result, I Pass the following Order:

ORDER

The reference is allowing holding that the action of the managment in denying overtime allowance at double the rate to Class III and IV Employees, drawing above

Rs. 5,500 is not legal and justified and that they are also entile for double the rate as paid to its Dock workers.

S. N. NAVALGUND, Presiding Officer

ANNEXURE-I

List of witnesses:

MW 1 - Sh. Jeevan Prakash

WW1 - Sh. Subash Katil

WW2 - Sh. Vinay Prasad Ashirwad

Documents exhibited on behalf of the Management:

- | | |
|--------|--|
| Ex M-1 | : Extract of clause 5 from its schedule of employees as on 01.04.2004 |
| Ex M-2 | : Reply received by Chairman, NMPT, Managalore from the Managing Director, Indian Ports Association dated 06.05.2004 |

Ducuments exhibited on behalf of the I Party:

- | | |
|--------|---|
| Ex W-1 | : Wage Revision Committee Report of January 1977 |
| Ex W-2 | : Wage Settlement dated 09.12.1994 between the Union, Federation and Management |
| Ex W-3 | : Settlement of wage revision, retirement benefits and conditions of service of Port and Dock Workers at the Major Ports w.e.f. 01.01.1997 |
| Ex W-4 | : Memorandum of Settlement dated 11.01.1990 of New Mangalore Port Cargo Handling Workers (Regulation of Employment) Scheme - 1990 |
| Ex W-5 | : Extract of Factories Act 1948 - Section 59 |
| Ex W-6 | : Renewal of Licence of the II Party management dated 22.02.2007 issued by Senior Assistant Director of Factories & Boiler, Division - II |
| Ex W-7 | : Copy of Licence and Registration issued by the Factories and Boilers for running of Port Trust Auto Repairs and Service Station |
| Ex W-8 | : Copy of licence and regisraion issued by the Factories and Boilers for running of Port Trust Workshop dated 04.01.2000 |
| Ex W-9 | : Memorandum of Settlement dated 04.11.1999 between the management of New Mangalore Port Trust and Representatives of Four Registered Trade Unions. |

- Ex W-10 : Minutes of meeting held in the chamber of Deputy Conservator of Mormugao Port Trust with Officers of NMPT and Members of Trade Unions on 15.11.1999 regarding payment of double OT to Marine Operational Staff
- Ex W-11 : Payment of Overtime allowance to staff of Mormugao Port Trust dated 4.8.1967
- Ex W-12 : Letter of Indian Port Association dated 15.11.2000
- Ex W-13 : Copy of Schedule of Employees of JNPT
- Ex W-14 : Copy of Schedule of Employees of Paradip Port
- Ex W-15 : Copy of Schedule of Employees of Mormugao Port
- Ex W-16 : Copy of Schedule of Employees of Vizag Port
- Ex W-17 : Copy of Schedule of Employees of Chennai Port
- Ex W-18 : Copy of Schedule of Employees of Kandla
- Ex W-19 : Copy of terms of settlement pertaining to the dispute of Cochin Port Trust
- Ex W-20 : Report of Failure of Conciliation of the Regional Labour Commissioner (Central), Ernakulam, Kochi
- Ex W-21 : Copy of the Award passed by the CGIT-cum-Labour Court, Ernakulam, Kochi dated 08.11.2006 regarding the payment of overtime allowance at double hourly rate
- Ex W-22 : Copy of Settlement dated 06.12.1994 and 02.08.2000

नई दिल्ली, 17 जून, 2013

का.आ. 1306.—औद्योगिक विवाद अधिनियम 1947 (1974 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बैंगलूर के पंचाट (संदर्भ संख्या सी आर न. 14/2009) को प्रकाशित करती है जो केन्द्रीय सरकारी को 15-6-2013 को प्राप्त हुआ था।

[सं. एल-12012/90/2008-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 17th June, 2013

S.O. 1306.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. CR No. 14/2009) of the Central Government Industrial Tribunal/ Labour Court, BANGALORE now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of CANARA BANK and their workman, which was received by the Central Government on 15.06.2013.

[No. L-12012/90/2008-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, YESHWANTPUR, BANGALORE

Dated : 18th March 2013

PRESENT : Shri S N Navalgund, Presiding Officer

C.R. No. 14/2009

| I Party | II Party |
|---|---|
| Sh. N. Ramesha, S/o R Nagaraja Rao, D No. 860, Kolar District, Kalyanpur-563 151 | The Deputy General Manager, Canara Bank, Bangalore Rural Circle Office, No. 86, III Floor, Spencers Towers, M G Road, Bangalore-560 001 |

APPEARANCES

| | | |
|----------|---|--|
| I Party | : | Shri M Raka Rao Authorised Representative |
| II Party | : | Shri T R K Prasad Advocate |

AWARD

1. The Central Government by exercising the powers conferred by Clause (d) of Sub-section (1) of Sub-section (2A) of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute *vide* Order No. L-12012/90/2008-IR(B-II) dated 03.03.2009 for adjudication on the following schedule:

SCHEDULE

"Whether the action of the management of Canara Bank, Disciplinary Action Cell, Circle Office, Bangalore Rural, M G Road, Bangalore, Karnataka in imposing the punishment of Compulsory Retirement on Shri N Ramesha, Ex sub-staff, Canara Bank, Kylapur Branch, Kolar District, Karnataka *vide* Order No. BLCR/DAC/4418/E 37-07 Dated 30-7-2007 of the Disciplinary Authority is justified and legal. What relief the workmen is entitled to?"

2. Pursuant to the notices issued to Sh. N Ramesh (hereinafter referred as I Party workman) and the Deputy

General Manager, Canara Bank, Bangalore Rural Circle Office (hereinafter referred as II Party workman), the I Party workman appeared through Sh. M Rama Rao, General Secretary, DDBEA, whereas the II Party appeared through Sh. T R K Prasad, advocate and filed their Claim and Counter Statement respectively. Having regard to certain allegations made in the claim statement the Domestic Enquiry was not being fair and proper while framing a Preliminary Issue as to.

"Whether the Domestic Enquiry conducted by the II Party against the I Party is fair and proper?"

After receiving the evidence of the Enquiry Officer for the II Party as MW 1 and exhibiting Ex M-1 to Ex M-23 and evidence of the I Party and his Defence Representative in the Domestic Enquiry as WW 1 and WW 2 respectively and exhibiting 32 documents as Ex W-1 to Ex W-32, after hearing the arguments by order dated 18.8.2011 the Preliminary Issue came to be answered in their Affirmative holding the Domestic Enquiry being fair and proper, the I Party was called upon to lead evidence on Victimization and unemployment *i.e.*, being not gainfully employed after his compulsory retirement from the II Party Bank he filed his affidavit and examined himself on oath as WW 1 (V). Thereafter when the matter was posted for arguments the I Party filed his written arguments whereas II Party counsel addressed oral arguments.

3. The brief facts leading to this Reference and Award may be stated as under.

4. While the I Party was serving as Sub-staff at Kyalanpur Branch of the II Party, on two of its customers namely Sh. M Chandrappa and Sh. K M Ramakrishna filing complaints which are produced at exhibit MEx-I and MEx-14 respectively in the Domestic Enquiry alleging that the I Party while demanding certain money to take care of sanctioning of loan asked for by them, received part of it, the II Party Bank while getting the said complaints investigated through Sh. H. Mustaq Ahmed who is examined as MW 5 in the Domestic Enquiry, after keeping the I party under suspension *w.e.f.* 05.07.2006 served the Charge Sheet dated 21.10.2006 as under which is marked as Ex M-1 while recording the evidence on issue of the fairness of the Domestic Enquiry.

"You are working as sub-staff at our Kyalanur branch since 17.7.2003 and placed under suspension with effect from 5.7.06 AOH.

On receipt of a complaint dated 25.12.05 by our Kyalanur Branch from one Sri Chandrappa alleging certain malpractices on your part, at our Kyalanur branch an investigation was conducted into the matter and the same revealed the following.

Sri Chandrappa had applied for Housing Loan of Rs. 4 lakhs at our Kyalanur branch. In this connection you

had demanded Rs. 10000/- as commission from Sri Chandrappa for getting the said loan sanctioned and Rs. 2000/- was paid by him to you as advance and Housing loan of Rs. 4 lakhs was sanctioned to Sri Chandrappa who availed Rs. 41000/- on 15.1.2006.

While discussing the matter with Sri Chandrappa by the Investigating Officer, he expressed displeasure and dissatisfaction about your activities in the branch, who also had stated that in the event of Bank not taking any action against you, the customers would be forced to take stren action against you.

Subsequently, you paid back Rs. 2000/- to Sri Chandrappa and brought pressure on him to take back the complaint who accordingly gave his complaint withdrawal letter, due to force on 20.2.06. It is also reported by Sri Chandrappa that you had humiliated him when he approached the Branch Manager directly for getting his Housing Loan sanctioned to him independently.

It was also revealed during investigation that the said branch has received a similar complaint letter from another borrower Sri K M Ramakrishna getting a loan to him and also stating that he had given Rs. 5000/- to you for the said purpose, but there was no further action on your part in getting the loan sanctioned to him, and that is why he had given a complaint to the branch.

Subsequently Sri Ramakrishna also had withdrawn his complaint who in his statement dated 30.5.06 given to the Investigating Officer confirmed having withdrawn his complaint as you repaid him Rs. 5000/- also requesting him through one of his friends to withdraw the complaint against him.

An explanation was called for from you regarding the matter by Staff Section (W), Circle Office, Bangalore *vide* BLC: SSW: 10372:EP:MISC:2006 dt. 29.3.2006 and the reply submitted by you *vide* your letter dt. 15.4.2006 is neither convincing nor satisfactory.

By accepting illegal gratification from the customer of our Bank, you have committed "GROSS MISCONDUCT" as per Chapter XI, Regulation 3, Clause (f) of Canara Bank Service Code.

All your above actions being prejudicial to the interest of the Bank you have also committed 'GROSS MISCONDUCT' within the meaning of Chapter XI, Regulation (3), clause (m) of Canara Bank service Code.

Sd/-
Deputy General Manager

5. The II Party being not satisfied with the reply given by the I Party dated 18.12.2006/MEx-5 ordered for holding the Domestic Enquiry appointing Sh. R. Guruprasad as Enquiry Officer and Sh. P. Shivaramu as Presenting Officer. The Enquiry Officer while observing

the formalities of the preliminary hearing and receiving the evidence of Sri M. K. Lakshman Rao, Investigating Officer, Sri Anantharamu K. N., Manager, Sri Ramakrishna K. M., Complained Customer, Sri M. Chandrappa, Complained Customer and Sri H. R. Mushtaq Ahmed, Investigating Officer as MWs 1 to 5 respectively and exhibiting 19 documents as MEx-1 to MEx-19 the detailed description of which are narrated in the annexure, as the I Part did not lead the evidence of himself or any other witnesses after receiving the written submissions of the Presenting Officer and affording sufficient opportunity to the I Party and his Defence Representative to file the written brief since the same was not received, he filed his Enquiry Report on 19.4.2007 holding the charge as proved. Then the Disciplinary Authority while forwarding the copy of the Enquiry Report after affording the opportunity of hearing passed the punishment dated 30.07.2007 imposing Compulsory Retirement and there after an appeal to the Appellate Authority, Appellate Authority affording opportunity of hearing confirmed the order of the Disciplinary Authority and rejected the Appeal. Then the I Party raised conciliation proceedings before the ALC(C) and on his submission of failure report dated 24.10.2008 the Central Government made this reference for adjudication on the above schedule.

6. Since the Domestic Enquiry conducted by the II Party against the I Party has been held as fair and proper by order dated 08.08.2011 the issues now remains for my consideration are:

1. Whether the finding of the Enquiry Officer holding the charge as proved as perverse necessitating the interference of this Court?
2. If not, whether the punishment imposed for the misconduct proved on the part of the I Party is excessive and requires to be modified?
3. What order?

7. On appreciation of the charge levelled against the I Party with the evidence produced for the management in Domestic Enquiry with the arguments put forward before me my finding on Point No. 1 and 2 are in the negative and Point No. 3 is as per the final order for the following reasons:

REASONS

8. The I Party in his written arguments running into 14 pages made no attempt to demonstrate the finding of the Enquiry Officer being either baseless, against the evidence placed before him or in any manner perverse. He simply narrated the story without referring the evidence on record. *Inter alia*, the learned advocate appearing for the II Party while taking me through the evidence of the two customers who complained against the I Party of

demanding and receiving bribe to help them in the process of loan asked by them examined as MWs 3 and 4 in the Domestic Enquiry and referring to the complaints and the letter of withdrawal of complaints given by them marked in their evidence as MEx-6 and MEx-15 respectively and their cross-examination by the Defence Representative vehemently urged that nothing has been elicited in their cross-examination to discredit their evidence and even a suggestion denying their evidence regarding the demand of bribe made by the him and payment made by them as well as they submitting the withdrawal letters on his persuasion and return of the amount received from them urged that no fault could be found with the finding of the Enquiry Officer charge being proved. He further submitting that though the I Party was not a loan sanctioning authority being a employee in the branch having made the customers to believe that he would take care of sanction of loan to them demanding bribe and receiving part of the amount demanded by him being prejudicial to the interest of the Bank in whom the customers loose faith the punishment of Compulsory Retirement is infact a lenient view taken by the II Party for which grave misconduct the punishment of dismissal could have been imposed. Thus, he supported the finding of the Enquiry Officer as well as the punishment imposed by the Disciplinary Authority and upheld by the Appellate Authority and urged to reject the reference.

9. When the Domestic Enquiry conducted by the II Party against the I Party is found fair and proper it was for the I Party to demonstrate that the finding of the Enquiry Officer is either not based on the evidence placed before him or it is in any manner perverse, but as already adverted to by me above no such effort has been made by the I Party. On the other hand as urged on behalf of the II Party though the customers of the Bank who gave complaints against the I Party alleging demand of bribe to take care of sanction of loan demanded by them and receipt of part of such demand as well as later approaching them with their well-wishers returning the amount received from them pressurizing them to withdraw their respective complaints though categorically confirmed by them the same being not disturbed in their cross-examination and even a suggestion denying the demand of bribe and receiving part of such demand and later approaching them with their well-wishers returning the amount persuading them to withdraw their complaints being made to them there was no reasons for the Enquiry Officer to hold that the charge levelled against the I Party being not proved. In other words on the unshattered evidence brought on record by the management the Enquiry Officer in my opinion did not commit any error in holding that charge being proved. Under the circumstances, I too find no reasons to hold the finding of the Enquiry Officer charge being proved as perverse. Accordingly, my finding on Point No. 1 is in the Negative.

10. Coming to the Point No. 2 though as tried to be made by him the I Party in the cross-examination of the

management witnesses there cannot be any dispute that he was not the authority to sanction the loan to the customers approaching the II Party bank with a request for loan but that in itself is no ground either to absolve him from the charge or to take any lenient view other than the view taken by the Disciplinary Authority and upheld by the Appellate Authority. The I Party was though not a loan sanctioning authority in the Bank being its employee demanding bribe from the customers making them to believe that he would take care of sanction of the loan asked for by them and in furtherance of such demand receiving a part of it highly damaging to the image of the bank in the eyes of the public/customers and it is an act unbecoming of a bank official. For the minconduct proved against the I Party of demanding bribe from the customers to get their loan sanctioned and receiving part of such demand in my view the Disciplinary Authority taking into account other circumstances has taken a lenient view in imposing the punishment of Compulsory Retirement for which he would have even imposed a punishment of Dismissal. Under the circumstances, I also find no reason to say that the punishment of Compulsory Retirement imposed by the Disciplinary Authority and upheld by the Appellae Authority being unreasonable or excessive. Accordingly while answering Point No. 2 in the Negative, I Pass the following Order:

ORDER

The reference is rejected holding that the action of the management of Canara Bank, Disciplinary Action Cell, Circle Office, Bangalore Rural, M. G. Road, Bangalore Karnataka in imposing the Punish of Compulsory Retirement on Shri N. Ramehsa, Ex-Sub-Staff, Canara Bank, Kylanur Branch, Kolar district, Karnataka *vide* Order No. BLCR/DAC/4418/E 37-07 dated 30/7/207 of the Disciplinary Authority is justified and legal and that the I Pary is not entitle for any reliefs.

(Dictated to UDC, transcribed by him, corrected and signed by me on 18th March, 2013)

S. N. NAVALGUND, Presiding Officer

ANNEXURE-I

Documents exhibited by II Party in Domestic Enquiry:

- MEx-1 - Copy of complaint dated 25.12.2005 given by Sh. M. Chandrappa
- MEx-2 - Letter addressed to Dy. Gen. Manager from Regional Manager dated 08.02.2006
- MEx-3 - Investigation Report dated 08.02.2006
- MEx-4 - Letter dated 01.02.2006 addressed to Asst. Gen. Manager

- MEx-5 - Letter dated 06.03.2006 addressed to Dy. General Manager
- MEx-6 - Letter of Sh. Chandrappa dated 05.03.2005 addressed to Asstt. General Manager
- MEx-7 - Letter of Sh. K.N. Anathanramu dated 05.02.2006 addressed to Asst. General Manager
- MEx-8 - Letter of I Party dated 04.03.2006 addressed to Asst. General Manager
- MEx-9 - Letter from Asst. General manager dated 29.03.2006 addressed to I Party
- MEx-10 - Letter of I Party dated 15.04.2006 addressed to Asst. General Manager
- MEx-11 - Loan Pass sheet in respect of Sh. M. Chandrappa
- MEx-12 - Pass Sheet of S. B. Account No. 10050 of Sh. M. Chandrappa
- MEx-13 - Letter Addressed by Sh. K.N. Anantharamu dated 04.05.2006 to the Manager, SSW, Co
- MEx-14 - Letter Addressed by Sh. K.M. Ramakrishna to the Customer Service Section
- MEx-15 - Letter Addressed by Sh. K.M. Ramakrishna to the Customer Service Section dated 06.04.06
- MEx-16 - Letter Addressed by Sh. K.M. Ramakrishna to Sh. Musthaq Ahmed
- MEx-17 - Letter Addressed by Sh. M. Chandrappa to the Customer Section dated 28.02.2005
- MEx-18 - Letter Addressed by Sh. M. Chandrappa to Sh. Musthaq Ahmed dated 04.05.2006
- MEx-19 - Investigation Report of Sh. H.R Mushtaq Ahmed dated 03.06.2006.

नई दिल्ली, 18 जून, 2013

का.आ. 1307.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब एंड सिंघ बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण /श्रम न्यायालय चंडीगढ़ के पंचाट (संदर्भ संख्या 329/2क 2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 17-6-2013 को प्राप्त हुआ था।

शीश राम, अनुभाग अधिकारी

[सं. एल-12012/69/98-आई आर (बी-II)]

New Delhi, the 18th June, 2013

S.O. 1307.—In pursuance of Section 17 of the Industrial Disputes Act 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No 329/2K5) of the Central Government Industrial -Tribunal/Labour Court-II CHANDIGARH now as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of PUNJAB & SIND BANK and their workman, which was received by the Central Government on 17.06.2013.

[No. L-12012/69/98-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

INTHE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

PRESENT: SRI A.K. RASTOGI, PRESIDING OFFICER.

CASE No. LD.329/2K5

Registered on 25-09-2009

Sh. Tej Pal Singh Sethi C/o Sh. H.C. Arora, H.No. 2299, Sector 44-C, Chandigarh.

....Applicant

Versus

The Assistant General Manager, Punjab & Sind Bank, Z.O.. Model Town, Jalandhar-144001

....Respondent

APPEARANCES:

For the worman Sh. Vikram Bajaj, Advocate

For the Management Sh. J.S. Sathi, Advocate

AWARD

Passed on 4.4.2013

Central Government vide Notification No.L-12012/69/98-IR (B-II) Dated 04-12-1998 read with corrigendum Dated 08-07-99, by exercising its power under Section 10 Sub-Section (1) clause (d) and Sub-section 2(A) of the Industrial Disputes Act, 1947, (hereinafter referred to as Act) has referred the following industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of Punjab and Sind Bank represented by the Asstt. General Manager, P.S.B. Zonal Office, Model Town, Jalandhar in imposing the punishment of dismissal from services upon Sh. Tej Pal Singh Sethi, Ex-Clerk-cum-Cashier w.e.f. 16.11.93 is just legal? If not, what relief the workman is entitled to?"

Vide award dated 12.11.2010 this Tribunal had answered the reference against the management and in

favour of the workman. The order of dismissal from service passed against the workman had been set aside and his reinstatement with consequential benefits had been ordered. In a writ petition the award appears to have been upheld but in Letters Patent Appeal No. 25 of 2012 the Hon'ble High Court set aside the award of this Tribunal as well as the order of the Hon'ble Single Judge and the matter was remitted to this Court certain direction.

The workman has raised industrial dispute stating that vide Charge-Sheet dated 16.11.1993 the Chief Manager of Punjab and Sind Bank, G.T. Road, Jalandhar (hereinafter referred to as Bank) purportedly in exercise of powers of disciplinary authority charged him under four heads namely; (1) Absence without leave, over staying the sanctioned leave without sufficient grounds (2) Willful in subordination or disobedience of unlawful and reasonable order of the management or superiors; (3) Habitual doing of minor misconduct amounting to major misconduct and (4) Doing an act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss. On 25.02.1995 the Chief Manager issued a Show Cause Notice proposing punishment of dismissal from bank service on all the charges. On a written representation and personal hearing on 20-03-1995 the Chief Manager reduced the punishment of dismissal to stoppage of increment for six months for charge no. 1 but for the remaining three charges, the punishment of dismissal was confirmed. The appeal of the workman against the order of dismissal also failed. It has been stated by the workman that the Charge-sheet was an amalgamation of minor and major misconducts. Charge No. 1 was a minor misconduct, while the remaining three charges pertain to major misconduct. Single Charge-Sheet for major and minor misconduct is against the order dated 16.10.1992 of the Chairman and Managing Director of the bank. According to the workman by issuing single Charge-sheet for major and minor misconduct the bank has deprived him of his right to appeal and the appointment of Enquiry Officer about the charge of minor misconduct is against the Bi-partite settlement dated 31.10.1979 read with C.M.D. Order dated 16.10.1992. Workman has further stated that for the main charge the punishment of stoppage of increment for a period of six months was imposed. The punishment of dismissal for the remaining charges which were merely offshoots of the main charge is arbitrary and disproportionate. The charge of habitual minor misconduct was erroneous. The disciplinary as well as appellate authority also failed to appreciate that the overstaying the sanctioned leave by the workman was due to sufficient and reasonable grounds. There was no intention on his part to disobey the instructions of the superiors and he did not commit any misconduct in this regard. The management had demanded from him the additional certificate from Civil Surgeon and the same was provided by him. Therefore, the irregularity, if any stands rectified. The punishment of

dismissal from service is grossly disproportionate and unduly harsh. The workman has prayed for setting aside the order of dismissal and for his reinstatement with all consequential benefits including back wages and seniority.

Respondent contested the claim. In its written statement it was stated that minor misconduct by its recurrence and refusal to abide by lawful instructions issued by the authorities' amounts to major misconduct. The bank acted in accordance with law and the action taken by it against the workman is not assailable on any alleged grounds. The authority competent to take disciplinary action in respect of major misconduct was legally competent to take action in the minor misconduct also. The Medical Certificate produced by the workman at later stage did not cover the period of his unauthorized absence and it cannot condone the misconduct or disobeying the lawful instructions of the competent authority. The banks' action in dismissal of workman from bank service was perfectly in consonance with the proved misconduct. Workman is not entitled to any relief.

The workman filed a rejoinder to the written statement of the respondent.

It is clear from the claim statement that the workman had never questioned the fairness of the inquiry. Then learned Presiding Officer however somehow fixed the case for hearing on the issue whether the inquiry was held proper or not. Perhaps on this account management considered necessary to file a supplementary written statement dated 6.12.2004 pleading that in case the Court comes to the conclusion that the domestic inquiry was not fair and proper for any reason whatsoever the management may be given an opportunity to produce evidence on merits to prove the charges before the Court.

The parties filed the written arguments not only on the fairness of inquiry but on the entire case and the award dated 12.11.2010 had been passed after considering the written arguments of the parties.

The Hon'ble High Court in PA No. 25 of 2012 considering the plea of the management in the supplementary written statement directed this Tribunal to provide an opportunity to the management to justify the order of the termination of the services of the workman and thereafter taken a decision in accordance with law. Accordingly the management was provided an opportunity for leading evidence and the management filed the affidavit of an examined Jaswinder, Singh Manager Punjab and Sind Bank, Zonal Officer, Jalandhar. Certain documents were also filed along with affidavit. In rebuttal the workman examined himself and filed certain papers. The affidavit of the workman and of one management witness Balkar Singh Khakh were already on record.

I have the learned counsel for the parties and perused the written arguments filed earlier and also the evidence on the record.

Fairness of inquiry means that inquiry should be held according to the rules of natural justice. The rule of natural justice require that the workman proceeded against should be informed clearly of the charge levelled against him witness should be examined in his presence in respect of the charges; these workman should be given a fair opportunity to examine witness including himself in support of his defence; and the Inquiry Officer should record its findings based on the evidence. Here in the case the workman has not alleged that he has not been informed about the charges levelled against him; witnesses were not examined in his presence, he was not given an opportunity to examine witnesses or to produce himself in support of his defence. Hence the fairness of the inquiry is not in question.

As management witness Jaswinder Singh has stated in his affidavit, the workman had been charge-sheeted on the following charges:—

- 1 Willful insubordination or disobedience of any lawful and reasonable orders of the management or of superiors under clause 19.5(e) of the Bipartite Settlement which amounts to gross misconduct.
- 2 Habitual doing of any act which amounts to minor misconduct, under clause 19.5(f) of the Bipartite Settlement, amounting to major misconduct.
- 3 Doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss.
- 4 Absence without leave or overstaying sanctioned lave without sufficient grounds.

Workman was found guilty on all the charges by the Inquiry Officer and the disciplinary authority passed the order of dismissal in respect of each of the first three charges. For the 4th charge his increment was stopped for six months. The punishment awarded on the fourth charge is not in question. The issues involved now in the case are:—

1. Whether the charge No. 1, 2 and 3 are proved against the workman and the action of the management in imposing the punishment of dismissal from service on the workman is just and legal?
2. To what relief is the workman entitled to?

My findings on the issues are as follows:—

FINDINGS

Issue No. 1

The charge regarding allegation No. 1 was as follow "further on being advised by Manager Extension Counter

LKC *vide* Telegram dated 20.7.1993 to appear before CMO for medical examination, you instead appearing before CMO simply wrote to Branch Manager *vide* your letter dated 22.7.1993 that since you have already submitted a medical certificate from a competent doctor the same does not attract replacement thereof from CMO, thus, wilful disobeying the lawful and reasonable orders of the management and your superiors."

While the charge regarding allegation No. 4 was—"You applied for one day leave i.e. for 2.7.1993 on the ground of sickness of wife but remained unauthorizedly absent thereafter. You did not report for duty inspite of B/O's letter dated 7.7.1993, Registered letter dated 15.7.1993 but instead you submitted one month's leave application dated 12.7.1993 submitting Medical Certificate as evidence of your own sickness."

From the language of this charge it is clear that the workman had submitted one month's leave application dated 12.7.1993 along with medical certificate. Management witness Jaswinder Singh MW1 has also stated in his affidavit that the workman had submitted leave application dated 12.7.1993 w.e.f. 3.7.1993 to 3.8.1993 alongwith medical certificate issued by a private medical Practitioner Dr. V.K. Vasudev. The alleged medical certificate was issued on 3.7.1993. in respect of the medical condition of the workman whereby the doctor had advised absence from duty for one month w.e.f. 3.7.1993. The witness has further stated that since the workman had obtained leave on 2.7.1993 on the ground of sickness of his wife but now he was alleging his own sickness hence the management became suspicious and the Manager in-charge sent telegram to the workman on 21.7.1993 asking the workman to get himself medically examined from CMO Jalandhar and submit medical certificate in three days. But instead of obeying the lawful orders of the bank the workman wrote back letter dated 22.7.1993 telling the bank that the certificate submitted by him does not attract replacement thereof from CMO. It was considered disobedience of the lawful and reasonable order of the management. Quoting the provisions of Bipartite Settlement pertaining to sick leave management witness has referred para 32 which says:—

"32. All sick leaves shall be granted on production of medical certificate acceptable to the bank."

It was argued that the bank acted well within its jurisdiction derived under the provisions of the Bipartite Settlement in asking the workman to produce medical certificate of his illness from CMO Jalandhar but the workman stoutly refused and willfully disobeyed the lawful and reasonable orders of the bank/superiors.

While the argument of the workman counsel is that the Bipartite Settlement does not specify the medical practitioner whose medical certificate would be acceptable

to the bank and the insistence of the bank to get medical certificate from CMO is not according to the provisions of the Bipartite Settlement. The referred para of the Bipartite Settlement does not authorize the management to reject the medical certificate produced by an employee arbitrarily and asking him for production of a medical certificate of a Medical Officer of the choice of the management.

It is important to note that the medical certificate produced by the workman was from a qualified doctor Dr. V. K. Vasudev who is 'M.S.' and it is on the letter pad of one 'Lajwanti Hospital' Jalandhar. According to the certificate whose copies (ten in number) were produced by workman during his cross-examination shows that he had been suffering from 'AC Lumbar Disc Syndrome.' It is also important to note and as the management witness also in his cross-examination has stated that the workman had been sent to CMO for examination by Inquiry Officer also on 31.8.1994. The Management himself did not bother to inquire from the CMO Office about the medical examination of the workman. The workman however has produced the copy of medical certificate of Civil Surgeon Jalandhar dated 11.3.1994 (paper No. 197) in which it has been certified that the workman had been diagnosed as a case of acute PIVD and he had been advised for Lumbar traction and rest for three weeks.

The medical certificates shows the genuineness of the sickness of the workman. I agree with the learned counsel for the workman that since there is no provision in the Bipartite Settlement for directing the workman to appear before the CMO for medical examination, hence, his non-appearance before the CMO does not amount to misconduct. The counsel for workman has cited management of the Northern Railway Coop. Credit Society Ltd., Jodhpur Versus Industrial Tribunal Jodhpur AIR 1967 SC 1182 in which the Hon'ble Supreme Court held that in the absence of any rule workman could very well feel justified in relying on certificates obtained by him from Registered Medical Practitioner even though he might only be a Vaid practicing Ayurvedic medicines. The charge of disobedience of orders which were not enforceable in rule could neither be the basis of any order of dismissal to any inference that the workman by merely being pretending to be sick.

I am therefore of the view that the workman cannot be held guilty of insubordination or disobedience of orders.

The second charge for which the workman has been held guilty and awarded a punishment of dismissal is "Habitual doing of any act which amount to minor Misconduct" (as per charge-sheet dated 16-11-1993 Ex. W-3). Regarding this the Enquiry Officer in his report of finding Ex. W-8 has said that "The C.S.C. repeatedly submitted leave application along with Medical Certificate of "Lajwant Hospital" from the Doctors' of his choice marked as 1, 3, 4,

5, inspite of bank's official order marked as Ex. MX-5. In the light of above para 19.5(f) habitual doing of any act, which amounts to minor misconduct is proved."

It was argued on behalf of management that habitual doing of any act of minor misconduct amounts to major misconduct. The learned counsel for workman has submitted in his arguments that simply remaining absent continuously for some period does not amount to habitual minor misconduct. As submitted by the learned counsel the clause 19.5 (f) reads as under:—

"19.5(f) Habitual doing of an act which amounts to minor misconduct as defined below:—

Habitual means course of action taken or persisted in notwithstanding that at least on three previous occasions censure or warning had been administered or adverse remarks have been entered against him."

It is clear that to constitute a major misconduct the minor misconduct must relate to previous three occasions. Continuous absence for certain period does not mean that everyday a workman remained absent will constitute a separate misconduct. Further the workman must have been censured/warned or earned an adverse remarks. Obviously the related charge also is not made out.

The next charge against the workman is of "doing any prejudicial to the bank or gross negligence or negligence involving the bank in serious loss" (as per charge-sheet dated 16.11.1993 Ex. W-3). For this charge also the workman was held guilty and punished by dismissal.

Regarding this charge the argument of the learned counsel for workman is that since the workman was not attending to his duties, there was no question of doing anything prejudicial to the bank or of the any negligence likely to involve the bank in serious loss. The misconduct can be attributable only against an employee who is on duty and the findings recorded by the Enquiry Officer that by neglecting to be on duty the provisions of the Bi-partite Settlement was violated by the workman is funny. The argument of the management on the other hand is that when an employee does not attend the duty it is bound to affect the efficiency and working of the institution and such conduct on the part of an employees constitute misconduct.

I do not agree with the argument of the management. Accepting this argument would mean that an employee cannot avail any type of leave, because during the leave period he will not attend this duties and that will affect the efficiency and working of the bank. The learned counsel for workman is right in arguing that misconduct involving negligence can be attributed to an employee who is on duty.

It will be noted that all the three charges for which the workman was awarded the punishment of dismissal

stemmed from a minor misconduct. The management has made a hill out of a mole. The management cannot say to be fair towards the workman. There is nothing on record to show that the service of the workman was not satisfactory. It appears that management twisted and moulded the facts of a minor misconduct to make several cases of major misconduct to get rid of the workman. The workman has been shown the doors without any justification. He is not guilty of the charges discussed above and punishment awarded to him is not only harsh or disproportionate but unwarranted. It is, therefore, held that the action of management of Punjab and Sind Bank represented by the Assistant General Manager, Zonal Office, Model Town, Jalandhar in imposing the punishment of dismissal from service upon the workman is totally unjust and illegal. Issue No. 1 is decided in favour of the workman.

Issue No. 2

There is nothing on record to show, nor does the management allege that the workman is a type of person whose presence is undesirable or is not conducive to the discipline or the business of the bank or the bank has lost confidence in him. I, therefore, find the workman entitled to reinstatement with all consequential benefits. Accordingly, the reference is answered against the management and in favour of the workman. The order of dismissal from service passed against the workman is set aside and he is reinstated with all the consequential benefits including back wages, seniority and consideration for further promotion. The management is directed to comply with the award within a month of receiving a copy of the award. Let two copies of award after due compliance be sent to the Central Government and one copy to District Judge Jalandhar for information and for further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 18 जून, 2013

का.आ. 1308.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार देना बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, मुम्बई के पंचाट (संदर्भ संख्या सी.जी.आई.टी.1/62 ऑफ 2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 06-06-2013 को प्राप्त हुआ था।

[सं. एल-12011/50/2004-आई.आर. (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 18th June, 2013

S.O. 1308.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (Ref. No. CGIT-1/62 of 2004)

of the Central Government Industrial Tribunal/Labour Court-1, MUMBAI now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of DEENA BANK, and their workman, which was received by the Central Government on 06.06.2013.

[No. L-12011/50/2004-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE-I

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

Present : JUSTICE G.S.SARRAF, Presiding Officer

REFERENCE NO. CGIT-1/62 OF 2004

Parties: Employers in relation to the management of Deena Bank

And

Their workman (Prakash M. Tawde)

APPEARANCES:

For the Dena Bank : Ms. Nandini Menon, Adv.

For the Dena bank : Mr. M. B. Anchan, Adv.
Employees Union

State : Maharashtra

Mumbai, dated the 11th day of March, 2013

AWARD PART-I

1. This is a reference made by the Central Government in exercise of its powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The terms of the reference given in the schedule are as follows:

Whether the action of the management of Regional Manager, Dena Bank, Thane Region, Mumbai in dismissing Shri Prakash M. Tawde, Cleaner-cum-Sepoy, Sativali Branch, from the Bank's services with immediate effect without notice vide memorandum dated 9th October, 1999 is justified, proper and in proportionate to the alleged charges of misconduct? If not what relief the affected workman is entitled and from which date and what other directions are necessary in the matter?

2. According to the statement of claim filed by Dena Bank Employees Union, Mumbai (hereinafter referred to as the Union) the workman Prakash M.Tawde, Cleaner-cum-Sepoy at Sativali branch of the Dena Bank (hereinafter referred to as the Bank) was suspended from service by an order dt. 15.9.1997 and subsequently he was issued chargesheet dt. 12.5.1998 for the alleged misconduct of not taking proper care while putting the rubber stamp of the branch on the blank forms of a draft book containing 50 leaves and thereby losing 7 DD forms which resulted in

monetary loss to the Bank. The workman was found guilty after enquiry. The Disciplinary Authority after giving the workman personal hearing dismissed the workman from service by order dt. 9.10.1999. Two drafts were encashed on 9.7.1997 issued from the Kalina Branch at the Service Branch of the Bank at Ahmedabad for Rs. 18,25,000/- It is not known what made the Kalina Branch to issue two DDs from the stationery of the Sativali Branch. The loss of the 7DD forms came to light when Assistant General Manager, Thane Region inspected the Sativali Branch on 22.7.1997. Since the workman was absent from 22.7.1997 the Branch Manager suspected him and filed a police complaint and FIR. The Branch Manager under whose custody the DD forms were kept was also chargesheeted. However, he was not dismissed and he was only transferred to another branch. The persons who issued the DDs at Kalina Branch from the stationery meant for the Sativali Branch were not issued show cause notice or chargesheet. The workman was honourable acquitted by the Criminal Court. The charges against the workman are baseless and the enquiry held on those charges was, therefore, vitiated. In the chargesheet dt. 12.5.1998 it is stated that DD leaves bearing no. DB/D 280054 and DB/D 280055 for Rs. 9,75,000 and Rs. 9,65,000 respectively were subsequently and fraudulently used to withdraw the amount from the Service Branch, Ahmedabad. However, by corrigendum dt. 21.5.1998 it is stated that 2 DD leaves bearing no. DB/D 28005 and DB/D 280012 were subsequently and fraudulently used to withdraw from the Service Branch, Ahmedabad Rs. 9,50,000 and Rs. 8,75,000/- respectively causing the Bank financial loss. There is thus variation not only in DD form numbers but also in amounts. The suspension order also does not spell out the DD nos. and the amounts. The Branch Manager of the Sativali Branch is responsible for the loss of 7 DD forms. The Branch Manager during the enquiry stated that all the staff members had access to the draft book then why the workman only was issued chargesheet. The Enquiry Officer based his conclusion on the statement of the Branch Manager Mr. Shah. Shah was an interested party and the 7 DD forms were lost from his custody. Had the Branch Manager been honest he would have complained to the Bank and the police on 12.6.1997 itself when it came to light that 7 DD forms were missing but he lodged the police complaint on 31.7.1997 and lodged FIR on 4.9.1997. The workman did not give any confessional statement before the police. According to the statement of claim the punishment of dismissal awarded to the workman is very harsh and it is disproportionate to the alleged misconduct. The workman is unemployed from the date of his suspension. He tried his best to get a suitable job but could not get since his dismissal is a blot on his career. It has, therefore, been prayed that the workman should be reinstated in service with full back wages and continuity of service.

3. According to the written statement the workman joined the service of the Bank as a Cleaner-cum-Sepoy on 12.3.1985 and at the material time he was posted at the Sativali Branch of the Bank as sub-staff. The past service record of the workman was not satisfactory. The workman was instructed by the Branch Manager to put the branch stamp on the blank forms of a DD book containing 100 leaves. However, the workman did not exercise adequate precautions which led to loss of seven blank forms. Out of the seven blank forms two blank demand draft forms were subsequently fraudulently used to withdraw from the Service Branch at Ahmedabad, an amount of Rs. 9,50,000 and Rs. 8,75,000/- causing financial loss to the Bank. The Bank, therefore, suspended the workman w.e.f. 15.9.1997. The Bank then issued a chargesheet on 12.5.1998 and a corrigendum on 21.5.1998 against the workman pointing out that the said act constituted gross misconduct in terms of para 19(5)(j) of the Bipartite Settlement dt. 19.10.1966 as modified from time to time. The workman was charged with dointg acts prejudicial to the interest of the Bank and acts of gross negligence involving/likely to involve the Bank in serious loss. The workman refused to submit his reply to the chargesheet and the corrigendum to the said chargesheet. The Bank commenced a departmental enquiry against the workman. The Branch Manager also lodged a complaint at the Manikpur police station. The workman was, however, acquitted by judgement and order dt. 13.12.2002. The judgement should have no effect on the departmental proceedings. The standard of proof required in a criminal case is that the offence should be proved beyond reasonable doubt whereas in the enquiry only preponderance of probabilities is to be seen. The Bank appointed R.P. Bhatt as the Enquiry Officer. The workman was permitted to be defended by a defence representative. The workman was furnished with all papers and documents that the Bank relied upon. The Enquiry Officer permitted the workman to cross examine witnesses of the Bank. Full opportunity was given to the workman to produce evidence in support of his defence. The enquiry was held in compliance of the principles of natural justice. The Enquiry Officer held the workman guilty. The workman was furnished with a copy of the report of the Enquiry Officer. The Disciplinary Authority accepted the findings of the Enquiry Officer and proposed the punishment of dismissal. The workman alongwith his defence representative appeared before the Disciplinary Authority on 4.10.1999 and made submissions against the proposed punishment. However, the Disciplinary Authority by order dt. 9.10.1999 imposed on the workman the punishment of dismissal from the Bank's service with immediate effect without notice. According to the written statement the punishment imposed on the workman is fair and proper taking into consideration the gravity and seriousness of the misconduct proved against him. This is not a fit case for the Tribunal to exercise power under Section 11-A of the Act. The Bank has, therefore, prayed that the reference be

answered against the workman.

4. Following issues have been framed:

- (1) Whether the enquiry is just and fair?
- (2) Whether there is any violation of principles of natural justice?
- (3) Whether the findings of the enquiry were perverse?
- (4) Whether the punishment awarded to the workman is harsh and disproportionate?
- (5) To what relief if any, is the workman entitled?

5. The Union has filed affidavit of the workman who has been cross-examined by learned counsel for the Bank. The Bank has filed an affidavit of Enquiry Officer, R.P. Bhatt, who has been cross examined by learned counsel for the Union.

6. Heard Mr. Anchan on behalf of the Union and Ms. Nandini Menon on behalf of the Bank.

Issues Nos. 1 to 3: The workman has stated in his cross examination:

I was represented by a defence nominee in the enquiry proceedings. I was not furnished copies of enquiry proceedings on the dates of hearing. I did not complain before anyone regarding this. My Union also did not lodge any complaint regarding this. I received a copy of the enquiry report. I was given full opportunity to cross examine the Bank's witnesses. I was given opportunity to lead evidence in defence. A written submission was made on behalf of me before the Enquiry Officer. I did not file any application before the Enquiry Officer to summon any document or witness in my defence. I received the order of my punishment which is M-1. I did not file any appeal against the punishment order.

The workman has stated in his cross examination that the Disciplinary Authority did not grant personal hearing to him before awarding punishment but this is contrary to what has been stated in the statement of claim where it is stated that the Disciplinary Authority dismissed the workman after giving the workman a personal hearing.

The Enquiry Officer R.P. Bhat has stated in his affidavit:

I say that on the basis of documents produced and evidence recorded in the departmental enquiry, I was of the considered opinion that Shri Tawde was guilty of the misconduct of doint act/s prejudicial to the interests of the Bank and gross negligence involving/likely to involve the Bank in serious loss.

On the basis of the evidence available on the record I am of the opinion that the enquiry held against the workman is fair and proper and there is no violation of

principles of natural justice. There is nothing on the record to suggest that the findings of the Enquiry Officer are perverse.

Issues nos. 1 to 3 are, therefore, decided against the workman and in favour of the Bank.

Award Part-I is passed accordingly.

The Reference be fixed for hearing on remaining issues on 14.3.2013.

JUSTICE G. S. SARRAF, Presiding Officer

ANNEXURE-II
BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO.1,
MUMBAI

PRESENT: JUSTICE G. S. SARRAF, Presiding Officer

Reference No. CGIT-1/62 of 2004

Parties: Employers in relation to the management of Dena Bank

And

Their workman (Prakash M. Tawde)

APPEARANCES:

For the Dena Bank : Ms. Nandini Menon,
Adv.

For the Dena Bank Employees : Mr. M.B. Anchan, Adv.
Union

State : Maharashtra

Mumbai, dated the 15th day of March, 2013

AWARD PART-II

This is a reference made by the Central Government in exercise of its powers under clause(d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) The terms of the reference given in the schedule are as follows:

Whether the action of the management of Regional Manager, Dena Bank, Thane Region, Mumbai in dismissing Shri Prakash M. Tawde, Cleaner-cum-Sepoy, Sativali Branch, from the Bank's services with immediate effect without notice vide memorandum dated 9th October, 1999 is justified, proper and in proportionate the alleged charges of misconduct? If not, what relief the affected workman is entitled and from which date and what other directions are necessary in the matter?

It is not necessary to narrate the facts here because the facts have been stated in detail in the Award Part-I passed by this Tribunal on 11.3.2013.

Following are the Issues:

- (1) Whether the enquiry is just and fair?
- (2) Whether there is any violation of principles of natural justice?
- (3) Whether the findings of the enquiry were perverse?
- (4) Whether the punishment awarded to the workman is harsh and disproportionate?
- (5) To what relief, if any, is the workman entitled?

Issues nos. 1 to 3 have been decided against the workman.

The parties have not led any evidence with respect to Issues No. 4 and 5.

Heard rival submissions on Issues nos. 4 and 5.

ISSUE NO. 4: The charge against the workman is that while putting branch stamp on the blank forms of a draft book containing fifty leaves he did not take proper care as a result of which the seven blank forms were lost out of which two blank forms were subsequently fraudulently used to withdraw from the Service Branch, Ahmedabad Rs. 9,50,000 and Rs. 8,75,000 respectively causing the loss to the Bank.

There is no charge of any dishonest intention or unlawful gain. Obviously there is no bad intention on the part of the workman. It appears that because of the negligence of the concerned persons in the Bank the two blank forms were fraudulently used to withdraw Rs. 9,50,000 and 8,75,000.

On going through the record and considering the rival submissions made by learned counsel for the parties I am of the view that in this background, the dismissal of the workman for an act of negligence is an excessive punishment and not commensurate with the charge of misconduct levelled against him. It is true that the workman has been found guilty of negligence but this is not, in my opinion, sufficient to warrant the punishment of dismissal.

In the facts and circumstances of the matter I am of the opinion that punishment awarded to the workman is very harsh and shockingly disproportionate and, therefore, depriving the workman 60 per cent of his back wages will be a punishment commensurate with the misconduct proved against him.

Issues no. 4 is decided as above.

ISSUE NO. 5: The Bank is directed to reinstate the workman within two months from today with 40 per cent of his back wages.

Award Part-II is passed accordingly.

Justice G. S. SARRAF, Presiding Officer

नई दिल्ली, 18 जून, 2013

का.आ. 1309 —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंडीकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, मुम्बई के पंचाट (संदर्भ संख्या सी०जी०आई०टी०१/१४ आफ 2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06. 06.2013 को प्राप्त हुआ था।

[सं एल-12012/110/2011-आईआर० (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 18th June, 2013

S.O.1309.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (Ref. No. CGIT-1/14 of 2012) of the Central Government Industrial Tribunal/Labour Court-1, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank, and their workman, which was received by the Central Government on 06.06.2013.

[No. L-12012/110/2011-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1,

MUMBAI

PRESENT : JUSTICE G.S. SARRAF, Presiding Officer

Reference No. CGIT-1/14 of 2012

Parties : Employers in relation to the management of Syndicate Bank

And

Their workman (Hemant L. Kale)

APPEARANCES:

For the Syndicate Bank : Ms. R.N. Shah, Adv.

For the Workman : Mr. Nitin A. Kulkarni, Adv.

State : Maharashtra

Mumbai, dated the 3rd day of May, 2013

AWARD

This is a reference made by the Central Government in exercise of its powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act 1947 (hereinafter referred to as the Act). The terms of the reference given in the schedule are as follows:

Whether the action of the management of Syndicate Bank in imposing the punishment of dismissal from service upon Sh. Hemant L. Kale, Ex-Special Assistant vide Order dated 7.3.1990 and not reinstating into services of the bank inspite of an acquittal from the CBI Court is legal and justified? What relief the workman is entitled to?

According to the statement of claim the workman Hemant L. Kale, was appointed in the Syndicate Bank (hereinafter referred to as the Bank) w.e.f. 25.8.1971. He was working as a clerk in the Bank. He was issued a chargesheet dtd. 13.7.1987 interalia alleging that while working as a Special Assistant at Khandala Branch between 22.8.1983 and 18.3.1985 he allowed his wife Smt. Sumati Hemant Kale to avail a farm loan of Rs. 20,000 on 10.5.1984 sanctioned by P.K.B. Mishra, the then Manager knowingly that his wife was not eligible to avail the said loan inasmuch as she did not own or possess any agricultural land and he made fictitious entries in the farm loan register showing repayment. He gave his reply dtd. 1.9.1987. Accordingly to the statement of claim the enquiry conducted against him was not fair and proper for the simple reason that he was suspended pending enquiry on 18.3.1985. The entire enquiry held against him is against the provisions of the Bipartite Settlement. Copies of documents were not given to him till the conclusion of the enquiry. The Enquiry Officer did not consider the evidence on record. The Disciplinary Authority issued order of termination on 21.12.1989 dismissing him from service. He preferred an appeal which was also dismissed. On the complaint of the Bank, C.B.I. filed a case against him. The Special Judge acquitted him. He acted under the wrong assumption that unless the C.B.I. Court acquitted him he could not demand reinstatement. He has, therefore, prayed that the delay in raising the dispute be condoned. After the judgement of the C.B.I. Court he filed an application before the Bank on 21.7.2010 which was rejected by the Bank on 13.9.2010. Thereafter he raised his demand in December 2010. According to the Statement of claim the enquiry is not fair and proper, the findings of the Enquiry Officer are perverse and the punishment is shockingly disproportionate. After his dismissal he tried to secure alternative job but he could not succeed. It has, therefore, been prayed that his termination be held illegal and void ab initio and the Bank be directed to pay full back wages together with all other consequential benefits from the date of his termination till 31.1.2012 (date of superannuation).

Accordingly to the written statement filed by the Bank the dispute has been raised after more than 20 years from the date of dismissal of the workman and, therefore, the reference is not maintainable. It suffers from inordinate gross delay and laches. According to the written statement the charges proved against the workman are very serious in nature. Full opportunity was given to the workman to defend himself. The Enquiry Officer gave findings on the basis of material available on the record. The Disciplinary

Authority accepted the findings of the Enquiry Officer after going through the enquiry proceedings. Appellate Authority rejected the appeal filed by the workman. The workman was tried along with P.K.B. Mishra (ex-employee of the Bank) P.K.B. Mishra, after his acquittal, vide Writ Petition No. 1929/2011 sought his reinstatement with back wages. The said petition was dismissed by the Bombay High Court *vide* order dt. 21.2.2012. The present reference is liable to be dismissed on the basis of the above judgement. The Bank has, therefore, prayed that the reference be rejected.

Following Issued have been framed:

1. Whether the enquiry held against the workman is not fair and proper?
- 1A. Whether reference is not maintainable on account of undue delay?
2. Whether the findings given by the Enquiry Officer are perverse?
3. Whether the action of the Syndicate Bank in imposing the punishment of dismissal from service upon the workman Hemant L. Kale vide order dt. 7.3.1990 and not reinstating inspite of the acquittal from the C.B.I. Board is legal and justified?
4. Relief?

As per the order sheet dated 14.1.2013 Issue No. 1-A is purely legal and, therefore, it has to be decided first.

Heard Mr. Shah, learned advocate on behalf of the Bank and Mr. Kulkarni on behalf of the workman.

ISSUE NO.1-A: The workman was issued chargesheet in July 1987 and the Enquiry Officer submitted his report in November 1989. The Disciplinary Authority awarded the punishment in March 1990 and the appeal against the order of punishment awarded by the Disciplinary Authority was rejected in June 1990. Learned Counsel for the workman has stated that the workman raised the dispute in December 2010 after the workman was acquitted by judgement dtd. 5.6.2010 passed by Special Judge (Under Prevention of Corruption Act) Pune in the case of C.B.I. vs. P.K.B. Mishra and others (Special case no. 11 of 1993). Thus there is delay of more than twenty years in raising the dispute.

The workman was prosecuted alongwith P.K.B. Mishra and another. P.K.B. Mishra was also an employee of the Bank and after his acquittal he filed a writ petition no. 1929 of 2011 in the Bombay High Court challenging his dismissal. The Bombay High Court held that the result of criminal prosecution on the same charges as levelled in the chargesheet did not have any impact on the departmental enquiry because the degree of proof required in departmental enquiry and criminal trial was different and the degree of

satisfaction required was also different. The Bombay High Court further held that acquittal in criminal prosecution was no reason to re-open the departmental proceedings which concluded twenty years back.

The case of P.K.B. Mishra and the case of the workman are similar and, therefore, it is difficult for me to take a different view in the matter.

Law does not prescribe any time limit for raising the dispute but a dispute which is stale cannot be the subject matter of reference under Section 10-A of the Act. If an employee allows the matter to become stale and approaches the Tribunal belatedly then the employer is at a great disadvantage to effectively contest or counter the claim. Therefore, even if no period of limitation is prescribed any belated challenge is liable to be dismissed on the ground of delay and laches.

It is, therefore, held that the reference is not maintainable on account of undue delay.

Issue no. 1-A is decided against the workman.

Since Issue no. 1-A is decided against the workman, the workman is not entitled to any relief.

Award is passed accordingly.

JUSTICE G S. SARRAF, Presiding Officer

नई दिल्ली, 20 जून, 2013

का.आ.1310.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सर्किल मेनेजरेंस मैनेजर, रिलाइंस नैकर लिंक प्रा.लि, भोपाल के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचात (संदर्भ संख्या सी.जी.आई.टी.एल.सी/आर/79/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 12-06-2013 को प्राप्त हुआ था।

[सं एल-40012/96/2006-आई आर (डी यू)]

जोहन तोपनो, अवर सचिव

New Delhi, the 20th June, 2013

S.O.1310.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/LC/R/79/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial dispute between the Circle Maintenance Manager, Reliance Next Link (P) Ltd. Bhopal and their workman, which was received by the Central Government on 12.06.2013.

[No. L-40012/96/2006-IR(DU)]

JOHAN TOPNO, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/79/2007

SHRI R.B.PATLE, Presiding Officer

Shri Rambhuwan Sharma,
S/o Shri Hiralal Sharma
Village Bhanti Post-Sagra Distt.
Rewa (MP) ...Workman

Versus

The Circle Maintenance Manager,
Reliance Next Link (P) Ltd.,
Circle Headquarter,
Reliance Infocom,
Mansaowar Complex,
Hoshangabad Road,
In front of NJP Bhawan, Habibganj,
Bhopal ...Management

AWARD

Passed on this 22nd day of April, 2013

1. As per letter dated 14-8-2007 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-40012/96/2006-IR(DU). The dispute under reference relates to:

"Whether Shri Rambhuwan Sharma is a workman as per the provision of I.D. Act, 1947 and if he is a workman, whether the action of Circle Maintenance Manager, M/s. Reliance Next Link (P) Ltd., Bhopal in terminating the services w.e.f 25-3-2006 is justified? If not, to what relief the concerned workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted his statement of claim at Page 3/1 to 3/4. The case of 1st party workman is that initially he was appointed as F.E.O. on vacant post after following prescribed procedure for appointment. His appointment was made on production as per order dated 12-6-02 for period of six months. Looking to his honesty and sincerity, he was confirmed vide order dated 1-7-2003. That he is well qualified for the post of FEO and he is having diploma in T.E.R. Class-I. That he was employed in the management's industry to do technical work. He was not doing supervisory or managerial work. He is covered as workman under Section 2(s) of I.D. Act.

3. That 1st party workman further submits that he has continuously worked from 7-10-2002 to 25-3-2006. He had completed 240 days continuous service during each of the year as provided under Section 25-B of I.D. Act.

That his services were terminated from 25-3-06 without assigning reasons. No permission was obtained from appropriate Government. The department of IIInd part is covered as Industry under Section 25(1) of I.D. Act. That his termination amount to retrenchment under Section 2(oo) of I.D. Act. That management failed to comply 25(N) of I.D. Act. That mandatory provisions of Section 25-G, H are not complied. Rule-77, 78 Industrial Dispute Rules 1957 are not complied. 1st party workman further submits that his services are terminated by victimization. He is unemployed after termination of his service. He prays for his reinstatement with consequential benefits.

4. IIInd party management filed Written Statement at page 8/1 to 8/2. the case of IIInd party is that 1st party is covered under Section 2(s) of I.D. Act. That workman was appointed on the post of FEO 2nd level which is a supervisory post. The workman was drawing salary more than Rs. 1600 per month. He was working in managerial and administrative capacity. His duties are of supervisory nature. The appointment letter dated 12-6-02 are accepted by workman. His services are covered by the conditions in appointment order. It is contended that the employee is not a workman under I.D. Act. The reference is not tenable. It is further contended that the dispensing of service of 1st party is not legal. His services were dispensed as per terms and conditions in the appointment order. While dispensing his services, the employee was given payment of 3 months in lieu of notice. The workman willingly accepted amount without protest. Violation of Section 25-G, H of I.D. Act and Rule 77, 78 under I.D. Rule is denied. IIInd party prays for rejection of the relief claimed by workman.

5. Ist party workman filed rejoinder contending that he is covered as workman under I.D. Act. That he was employed to do technical work, maintenance and servicing of Generator set, Air Conditioner, and L T Panel and SMPS, equipments etc. He was not doing supervisory or managerial work. The allegations of IIInd party in that regard are denied. It is reiterated that IIInd party is covered under Section 25(1) of I.D. Act. His services are terminated in violation of mandatory provisions.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- (i) Whether the IIInd party Industry is governed by Chapter V-B of I.D. Act and provisions of Section 25-K are applicable to it? In Negative
- (ii) Whether it is proved that Ist party employee is workman under Section 2(s) of I.D. Act. In Affirmative

| | |
|--|---|
| (iii) Whether the termination of services of Ist party workman Rambhuwan Sharma w.e.f. 25-3-06 is illegal? | In Affirmative |
| (iv) If so, to what relief the workman is entitled? | Workman is entitled to reinstatement with 50% back wages. |

REASONS

7. Ist party workman is challenging his termination from service on grounds that his services are terminated in violation of Section 25-L, N of I.D. Act. However his pleadings and evidence is silent that more than 100 employees were working in the establishment of the IIInd party.

Section 25-K in Chapter V-B of I.D. Act provides. The provisions of this chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months.

Section 25-L defines "Industrial establishment" means—

- (i) A factory as defined in clause (m) of Section 2 of the Factories Act, 1948;
- (ii) A mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952;
- (iii) A plantation as defined in clause (f) of Section 2 of the Plantations Labour Act, 1951;

The pleadings and evidence of Ist party workman are silent whether the industry run by IIInd party falls in any of those categories therefore provisions of Chapter V-B or Section 25 (K & L) are not applicable. For above reasons, I record my finding in Point No. 1 in Negative.

8. Point No. 2—The parties are in controversy whether the Ist Party employee is covered under Section 2(s) of I.D. Act. Workman pleads that he was not doing managerial or supervisory duties. He was appointed only for technical work. In his affidavit of evidence also, he has stated those facts in para-3 of his affidavit. In his cross-examination, he admits appointment letter P-1. The appointment letter Exhibit P-1 provides duties in clause VII. Any of his duty do not indicate that he had powers to make any appointment, grant leave, write CRs etc. The evidence in cross-examination of management's witness Shri V.K. Shukla clearly shows that Ist party workman has no authority to sanction leave of any employees. That the contractor workers called vendors were working under his control. Any employee of Reliance Next Link (P) Ltd. were not working under him. He was not supervising work of

employee of reliance *i.e.* IIInd party. Learned counsel for Ist party workman Mr. Verma submitted that Ist party employee is covered as workman.

9. In support of his arguments, learned counsel relies on ratio held in

Case of All India Reserve Bank Employees Association and another *versus* Reserve Bank of India and another reported in AIR 1966 SC. 305. Their Lordship held the word "Supervise" and its derivatives are not of precise import. The word must often be construed in the light of the context, for unless controlled, they cover an easily simple oversight and direction as manual work coupled with a power of inspection and superintendence of the manual work of others.

The question whether a particular workman is a supervisor within or without the definition of workman is ultimately one of fact, at best one of mixed fact and law. The question will really depend upon the nature of the industry the type of work in which he is engaged the organizational set up of the particular unit of industry and like factor.

Their Lordship considered there is a power of assigning duties and distribution of work there is supervision. Mere checking of the work of others is not enough because this checking is a part of accounting and not of supervision.

In present case, the evidence of Ist party workman has stated that he was engaged for doing technical work. The conditions in the appointment order Exhibit M-1 do not indicate any supervisory or managerial duties assigned to the workman though he was receiving salary more than Rs. 1600 per month. The evidence in cross-examination of management's witness clearly shows that any employee of Reliance Next (P) Ltd. was not working under Ist party workman. Therefore there is no question of supervisory duties performed by workman. For above reasons, I held that the Ist party employee is workman under Section 2(s) of I.D. Act. I therefore answer Issue No. 2 in Affirmative.

10. Issue No. 3.— The question is whether the termination of services of Ist party workman is illegal in violation of Section 25-F Rule 77,78 of I.D. Act. The termination order Exhibit M-1 shows that on termination of Ist party workman about 3 months pay of Rs. 9039/- was offered to be paid on production of No Due Certificate. The workman in his cross-examination admits that he had received said amount. Learned counsel for Ist party Mr. Verma submits that amount of retrenchment compensation is necessary to be paid before termination of service. That mere offer to pay such amount at the time of termination is not legal. The retrenchment of employee on offer to pay the amount is not legal. In support of his argument, learned counsel relies on ratio held in—

Case of Pramod Jha and others *versus* State of Bihar

and others held in AIR 2003-SC-1872. Their Lordship of the Apex Court held Section 25-F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month's notice. On the contrary clause(b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. Payment of tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind would result in nullifying the retrenchment. Moreover, compliance with clauses (a) and (b) of Section 25-F strictly as per the requirement of the provision is mandatory. However, compliance with clause (c) is directory."

Though learned counsel for IIInd party Shri Shrivastava argued that the amount was offered to be paid was shown in the order of termination. The amount was to be obtained after submitting No Due Certificate. The management's witness in his cross-examination has admitted that No Due Certificate could be obtained only after termination of services. That amount offered in termination order is apparent after the termination of Ist party employee. It clearly vitiate the retrenchment. At the time of his retrenchment, no list of employees working in the establishment of IIInd party was displayed. The evidence of Ist party employee that other employee is engaged in his place remained unchallenged. Management witness has not started anything about it. Thus it is apparent that the retrenchment of Ist party workman is illegal for violation of Section 25-F, H of I.D. Act. For above reasons, I record my finding in Point No. 3 in Negative.

11. Issue No. 4:—The question is to what relief the workman is entitled. Learned counsel for employee Shri Verma submits that retrenchment is held vitiated. Ist party workman is entitled to retrenchment with full back wages. In reply, counsel for IIInd party Shri Shrivastava pointed out that Ist party workman was serving in Military, he is receiving pension. Workman admitted in his cross-examination that he is receiving pension, he was in military service for several year. Considering these aspects, Ist party workman is not entitled to reinstatement with full back wages, rather it would be appropriate to allow reinstatement with 50% back wages. Accordingly I record my finding in Issue No. 4.

12. In the result, award is passed as under:—

- (1) Ist party employee Ram Bhuwan Sharma is covered as workman under Section 2(s) of I.D. Act.

- (2) Action of IIInd party management i.e. Circle Maintenance Manager of M/S Reliance Next Link (P) Ltd. Bhopal in terminating services of Ist party workman from 25.03.2006 is illegal.
- (3) IIInd party management is directed to reinstate the workman Shri Ram Bhuwan Sharma with 50% back wages.

R. B. PATLE, Presiding Officer

नई दिल्ली, 20 जून, 2013

कानून 1311 —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रेजक्ट मैनेजर, खादी ग्राम उद्योग आयोग, शियोर के प्रबंधनतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या सी जीआईएलसीआर/299/99) को प्रकाशित करती है जो केन्द्रीय सरकार को 12062013 को प्राप्त हुआ था।

[सं. एल-42011/24/1999-आई.आर. (डी.यू.)]

जोहन तोपनो, अवर सचिव

New Delhi, the 20th June, 2013

S.O. 1311.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/21299/99) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial dispute between the Project Manager, Khadi Gramodyog Aayog, Sehore and their workman, which was received by the Central Government on 12.06.2013

[No. L-42011/24/1999-IR (DU)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT

INDUSTRIAL TRIBUNAL-

CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/299/99

SHRI R.B. PATLE, Presiding Officer

Shri Harish Kumar Raikwar,

C/o General Secretary,

Kendriya Pooni Samyantra Shramik Sangh.

Sehore (MP)

.....Workman

Versus

Project Manager,

Kendriya Pooni Samyantra Khadi

Gramodyog Aayog,

Sehore (MP)

.....Management

AWARD

Passed on this 3rd day of April 2013

1. As per letter dated 13-9-99 by the Government of India Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-42011/24/99/IR(DU). The dispute under reference relates to:

"Whether the action of the management of Project Manager, Kendriya Pooni Samyantra Khadi Gramodyog Commission, in stopping the annual increment of Shri Harish Kumar Ramkawar on the basis of the enquiry conducted by an outsider Advocate who is neither an Govt. official nor a Deptt. Officer is legal and justified? If not, to what relief he is entitled?"

2. After receiving reference, notice were issued to the parties. Ist party failed to submit Statement of Claim. Ist party is proceeded ex parte on 19-1-2011 as the workman failed to submit statement of claim after repeated notice issued to him.

3. IIInd party management also failed to file Written Statement.

4. As the Ist party workman not filed Statement of Claim and IIInd party management has not filed Written Statement, the reference is disposed off as there appears no dispute between the parties.

5. As such No Dispute Award is passed.

R. B. PATLE, Presiding Officer

नई दिल्ली, 20 जून, 2013

क्रम 1312 —ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ जरनल मैनेजर, डिपार्टमेंट आफ टेलीकाम एवं अर्दस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकारी औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या संनीहस्ताकरण /149/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 12062013 को प्राप्त हुआ था।

जोहन तोपनो, अवर सचिव

सं. एल.-40012/153/2001-आई. आर. (डी.यू.)

New Delhi, the 20th June, 2013

S.O. 1312.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/149/2001) of the Central Government Industrial Tribunal cum Labour Court, Jabalpur as shown in the Annexure, in the Industrial dispute between the Chief General Manager, Deptt. of Telecom and others and their

workman, which was received by the Central Government on 12.06.2013

[No. L-40012/153/2001-IR (DU)]

JOHAN TOPNO, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-****CUM-LABOUR COURT, JABALPUR**

No. CGIT/LC/R/149/2001

Presiding Officer: SHRI R. B. PATLE,

Shri Gafur Khan,
S/o Shri Sardar Khan,
Vill: Ukaavata,
PO Ukaavata,
Tehsil Shahapur,
Shajapur Distt.

.....Workman

Versus

Chief General Manager,
Dept. of Telecommunication,
Hoshangabad Road, M.P. Circle,
Bhopal (MP)
The T.D.E.,
Rajgarh, At: Biaora,
Raigarh

.....Management

AWARD

Passed on this 12th day of April, 2013

1. As per letter dated 7-9-2001 by the Government of India Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-40012/153/2001-IR(DU). The dispute under reference relates to:

"Whether the action of the management of TDE, Biaora in terminating the services of Shri Gafur Khan S/o Shri Sardar Khan w.e.f. 31.12.1995 is justified? if not, to what relief the workman is entitled for?"

2. After receiving reference, notice were issued to the parties. Ist party failed to submit his Statement of Claim. Ist party is proceeded ex parte as per order dated 1-12-2006.

3. IIInd party was directed to file its Written Statement. Ex parte Written Statement is submitted by management on 15-3-2011. IIInd party denied that workman had worked on its establishment. It is contended that the reference is not tenable as workman did not work with the management. There is no question of his regularization. There is also no question of termination of his services in violation of Section 25-F of I.D. Act. It is contended that no question arises of completing 240 days service. IIInd party prayed for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of TDE, Biaora in terminating the services of Shri Gafur Khan S/o Shri Sardar Khan w.e.f. 31-12-1995 is justified?

In Affirmative

(ii) If so, to what relief the workman is entitled to?"
Relief prayed by workman is rejected.

REASONS

5. In party workman is challenging legality of his termination. However he failed to submit his statement of claim or adducing evidence. The management submitted Written Statement and denied that the Ist party workman worked anytime on its establishment. The affidavit of IIInd party management of witness Ramjani Khan is filed. The said witness has not been cross-examined. Ist party workman did not participate in the proceeding. Witness of the management has stated that workman never worked on establishment of the IIInd party. His evidence remained unchallenged. As Ist party workman failed to adduce any evidence to substantiate his claim, it cannot be said that the action of termination of services of Ist party workman is legal. For above reasons, I record my finding in Point No. 1 in Affirmative.

6. Point No. 2-Wrokman is not entitled to any relief as prayed by him.

7. In the result, the award is passed as under:—

- (1) The action of the management of TDE, Biaora in terminating the services of Shri Gafur Khan S/o Shri Sardar Khan w.e.f. 31-12-1995 is legal.

(2) Reliefs prayed by workman are rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 20 जून, 2013

कथा 1313 — औद्योगिक विवाद अधिनियम, 1947
 7 का 14) की धारा 17 के अनुसरण में, केन्द्रीय
 चीफ जरनल मैनेजर, डिपार्टमैन्ट आफ टेलीकाम एवं
 के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों
 तोच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय
 औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ
 सी.जी.आई.टी./एल.सी./आर./11/2001) को प्रकाशित
 है, जो केन्द्रीय सरकार को 12.06.2013 को प्राप्त
 था।

सं. एल.-40012/386/2000-आई.आर. (डी.यू.)]

जोहन तोपनो, अवर सचिव

New Delhi, the 20th June, 2013

S.O. 1313.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/11/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial dispute between the Chief General Manager, Deptt. of Telecom and others and their workman, which was received by the Central Government on 12.06.2013

[No. L-40012/386/2000-IR (DU)]

JOHAN TOPNO, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-
CUM -LABOUR -COURT, JABALPUR
No. CGIT/L.C/R/11/2001**

Presiding Officer : SHRI R.B. PATLE

Shri Manish Dubey,
S/o Shri Shiv Prasad Dubey,
Near Gopal Dal Mill, Hospit
GunaWorkman

Versus

Chief General Manager,
Dept. of Telecommunication,
Hoshangabad Road, MP Circle,
Bhopal (MP)
Distt. Engineer (Phones),
Guna

...Management

AWARD

Passed on this 26th day of April, 2013

1. As per letter dated 17-11-2000 by the Government of India Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-40012/386/2000/IR(DU). The dispute under reference relates to :

"Whether the action of the management of Distt. Engineer (Phones), Guna in terminating the services of Shri Manish Dubey s/o Shiv Prasad Dubey w.e.f. 1-2-98 is justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notice have been issued to the parties. Ist party workman submitted statement of claim at Page 4/1 to 4.4. The case of Ist party workman is that he was appointed from December 1992 in General Cadre by IIInd party management. That workman was doing work of various natures assigned to him by the management. He was continued in service till 1-2-98 without any break. He had completed 240 days continuous service during each of the calendar years. He claims to have acquired status of workman under Section 25-B of I.D. Act. that from 1-2-98, he was prevented from work, his services were terminated

orally without notice, without retrenchment compensation, seniority list of employees was not displayed.

3. Ist party workman submits that he was denied equal wages for equal work. His services were not regularized. Inspite of repeated efforts, he was not permitted to work, termination of his services is in violation of provisions of I.D. Act, Section 25-F is not complied. The service are terminated without enquiry or according hearing. That IIInd party has violated Section 25-F, G & H of I.D. Act and Rule 77 of I.D. Act, Ist party workman prays for setting aside his termination. He also prays for reinstatement with back wages.

4. IIInd party failed Written Statement at page 6/1 to 6/3. IIInd party denied the claim of Ist party workman. It is contended that the Ist party workman was not appointed on any post in Telecom deptt. since December 1992. The contentions of Ist party workman are false. That the department of IIInd party engages casual labours for petty works. The services of such employees are terminated after completion of work. It doesnot amount to retrenchment since 1985. IIInd party has totally stopped muster roll. That workman was not in the record of his working which requires verification.

5. IIInd party submits that Ist party workman has not completed 240 days continuous service. The provision of Section 25-B of I.D. Act are not applicable. That Ist party workman is not entitled to regularization of services as prayed by him. The management cannot engage any person without work. Rather it is contention of IIInd party that Ist party workman was never appointed, neither he has been retrenched. The local officer as per requirement engaged labor time to time. Therefore there is no question of prohibiting workman from his duties or termination of his duties. It is further contended that few labour were engaged by local officers for some paid works after completion of work service of such labours were automatically terminated. Payment of labours also given as per work on unnoted in the department in violation of Section 25-F, G & H of I.D. Act is denied. It is denied that workman had completed 240 days service during any of the calender year. Appointment of casual labours has been banned since 31-3-1985 in the department. That it is contended that since 1998, workman were engaged on contract basis through tender. As per the terms and conditions of tender, the tenderer supplied the workman if department needs to complete the specific work. On such contentions IIInd party denied violation of any of the statutory provisions and prays for rejection of the relief prayed by the Ist party workman.

6. Ist party workman submitted rejoinder at Page 8 of the record. The contentions in Written Statement of IIInd party are denied. It is submitted that the total discontinuation of muster roll in department of IIInd party is beyond his comprehension. He reiterates that from

December 1992 he was continuously working with the department of IIInd party. He had completed 6 years continuous service, he had completed 240 days working during each of the calendar year. He has reiterated violation of statutory provisions that the provisions of I.D. Act and prayed for reinstatement with back wages.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

| | |
|---|---|
| (i) Whether the termination of Ist party workman | In Negative |
| Shri Manish Dubey | |
| S/o Shri Shiv Prasad Dubey | |
| by management w.e.f. 1.2.98 | |
| is legal? | |
| (ii) If so, to what relief the workman is entitled to?" | Its party workman is entitled to compensation Rs. 1,50,000 and retrenchment compensation, notice pay as per final orders. |

REASONS

8. Ist party workman is challenging his oral termination from 1-2-98. He alleges violation of Section 25-F, G & HQ and Rule 77 of I.D. Act. He had worked 240 days continuously during each of the calendar years. IIInd party denied all those contentions. Rather it is contended that Ist party workman was never appointed on any post, there is no question of termination or violation of provision of I.D. Act.

9. Ist party workman filed affidavit of his evidence. He has stated on oath that he was appointed on 21-12-92 and he was in continuous employment of IIInd party without any break. He had completed 240 days continuous service during each of calendar year. His services were orally terminated from 1-2-98. He was not given notice nor paid retrenchment compensation. In his cross-examination, Ist party workman has denied that he was working as daily wage labour. He claims that he was working on monthly basis. Ist party workman is absolutely not cross-examined about his appointment on 21-12-92 or his service discontinued from 1-2-98. In his cross-examination, the statement that he had completed 240 days is not challenged. His evidence that he was not given notice, he was not given retrenchment compensation and violation of Section 25-F, G & H is also not challenged in the cross-examination.

10. Evidence of management's witness Shri Vasant Kumar Pateria on affidavit, he says that the workman was never appointed, no appointment letter was given. In para 4 of his affidavit, he states on oath the employees doing the work was of casual nature as per exigency. That the

work of laying cable is discontinued, electronic exchanges are established and therefore workman are not required. That the employees were engaged as per exigencies in post. The workman has not completed 240 days continuous service in any of the calendar year.

11. In his cross-examination, management's witness says that he has stated in his affidavit, information received is as per record and not as per personal knowledge received by him. That he had seen payment voucher, muster roll, work order. On its basis, he had filed affidavit of evidence, he has seen those documents around 1997 but did not recollect exact year. The documents seen by him are not produced on record. That he had seen the record in April 2010. He claims ignorance for which period the Ist party workman has filed the proceeding. That he had seen payment voucher for the period 1992 to 1996. That he was working at Sagar during 1992 to 1998, he was not working at Guna during the said period. That he had not seen record of engaging casual labours. The management's witness is changing his version at different stages when he has seen the record about payment voucher, work order etc. how those documents are not produced. It is clear from his evidence that the best evidence is withheld from court for the reasons unknown. The management witness in his further cross-examination has stated that during his tenure, the casual labour was not taken on the muster roll. The practice not maintaining muster roll despite engaging casual labour, not maintaining vouchers itself is device to avoid the provisions of I.D. Act. The document Exhibit W-2 copy of reply filed before ALC shows that casual labours were engaged and wages were paid, their services were discontinued after completion of work. The documents are contrary to contentions of IIInd party that workman was never engaged.

12. Though management has pleaded that casual workers were engaged from 1998, no documents are produced on record as to which of the contractor was engaged, whether such contractor had obtained licence for providing workman to the department as provided under Section 10 of the Contract Labour Act. During course of argument, it was heavily in dispute whether the workman had completed 240 days continuous service. Workman has filed application No. 9 for production of document *i.e.* muster roll, payment voucher etc. The said application was opposed by management and ultimately rejected after hearing the parties. The rejection of application does not relieve IIInd party management from producing best evidence in his custody. Parties cannot be terminated to withhold any evidence. The evidence of Ist party workman is tested on probabilities with the evidence of management's witness. The evidence of workman that he was appointed in 1992 and continued till 1-2-98 is not challenged. It is not also challenged that he has worked 240 days service during each of the calendar year. The said part of the evidence of Ist party workman has remained unchallenged and therefore

I do not find any reason to disbelieve said evidence. So far as evidence of witness of IIInd party, he has seen record of payment voucher, muster roll, work order but has not produced such record and therefore his evidence appears to be not reliable. He is suppressing relevant records from Court. For above reasons, I have no hesitation to hold that the workman has completed 240 days continuous service during each of the calendar year, no notice was issued for termination of his service, he was not paid retrenchment compensation, Seniority list of the employees working in IIInd party was not displayed at the time of termination of Ist party workman. Thus the services of Ist party workman are terminated in violation of Section 25-F G & H of I.D. Act. The termination of services of workman is therefore illegal. For above reasons, I record my finding on Point No. 1 in Negative.

13. Point No. 2- The question is to what relief the Ist party workman is entitled. His evidence in cross-examination shows that his name was not sponsored from employment exchange. he was not received any interview call. Any procedure for his appointment was not followed. The evidence of witness of management that the work has completely changed, the digital telephone exchanges are installed are not challenged in his cross-examination, his evidence that casual workers are not required for laying cables also remained unchallenged. Keeping those aspects in view, I proceed to deal with the citations relied by the counsel for parties.

14. Learned counsel for workman relies on —

"Ratio held in Case of Shri Anoop Sharma Versus Executive Engineer, Public Health Divison No. 1, Panipat (Haryana) reported in 2010-SCC-497. Their Lordship in the above cited case confirmed order of reinstatement filed by Labour Court for violation of Section 25-F (a) and (b) of I.D. Act. As the management has failed to prove compliance of clause (a) and (b) of Section 25-F, delay in sending DD after about three months to termination was not explained by the employer.

The facts of present case are not comparable. The ratio cannot be beneficially applied to the present case at hand for the reasons that the reinstatement was directed for violation of Section 25-F Clause a & b of I.D. Act. There was no pleading about initial engagement was not legal. The contention was Ist time raised before the Hon'ble High Court. In the present case, Ist party workman has been cross-examined on the point he was not sponsored through Employment Exchange, he had not received interview calls for his appointment.

Next reliance is placed on ratio held in case of Shri Ramesh Kumar versus State of Haryana reported in 2010-12 Supreme Court Cases 543. Their Lordship of the Apex Court upheld Labour Court's direction for reinstatement with continuity of service but with concession of workman to

forgo back wages. Their Lordship held in case of termination, what is required to be seen is whether he has completed 240 days of service in preceding 12 months or not. If he has then the service cannot be terminated without giving notice or compensation in lieu of it in terms of Section 25-F. Though appointment on Public post cannot be made in contravention of recruitment rules and constitutional scheme of employment, contention that initial appointment of appellant was contrary to recruitment rules and constitutional scheme of employment was not raised either before Labour Court or High Court at the first instance.

The ratio held in the case does not fully support the claim of 1st party workman for reinstatement with back wages.

In case of ratio held in case between Maharashtra State Board of Secondary and Higher Secondary Education, Amravati and another versus Sanjay Krishnarao Shrungare, Amravati reported in 2008 II CLR-301. Their Lordship observed on examination of record, the Division Bench held that while there is no doubt that the burden did not lie on the appellants to disprove that the respondents had worked for 240 days, if the appellants were in possession of some evidence in respect of the services rendered by the respondents, there is no reason why it should not have tendered such evidence. If the appellant chose to keep from the Court the best evidence it had in respect of respondents employment, the appellant must blame itself.

The ratio held in the case is not dealing with the point of reinstatement or granting back wages if the termination is found illegal.

In case of Bhilwara Dugdh Utpadak Sahakari S. Ltd and Vinod Kumar Sharma in 2011-IV-LLJ-292 SC. Their Lordship held High Court is not entitled to interfere with the finding of fact recorded by Labour Court. It is held correct that the employer resorted to subterfuge to avoid liabilities under various labour statutes by showing that the concerned workman are not their employees but are employees of a contractor or that they are merely daily wage or short term or casual employees when in fact they are doing the work of regular employees.

15. Learned counsel for 2nd party management Shri Khare relies on—

Judgment in Civil Appeal No. 3815/10 by supreme Court of India. In para-7 of the judgement, his Lordship observed it is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of

reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

The facts of present case shows that the digital telephone exchanges are installed, dutes of laying cable is not available. The workman was not appointed after following procedure for recruitment therefore his services cannot be regularized as held in case of Secretary, State of Karnataka and other versus Umadevi and others reported in 2006-4-SCC-1 relied by learned counsel for 2nd party. The ratio held in said case is absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or adhoc employees appointed/recruited and continued for long in public employment dehors the constitutional scheme of public employment are not entitled to the benefit of regularization. Hon'ble Apex Court held in such cases, High Court may not be justified in interim directions.

16. Considering the evidence on record as 1st party workman was not appointed following prescribed procedure for recruitment, the work after installation of digital telephone exchange, work of laying cable is not available. In my considered view, workman is not entitled to reinstatement with back wages. As held by his Lordship in Civil Appeal No. 3815/2010, compensation in lieu of reinstatement would be the appropriate relief. 1st party workman has completed 6 years service. He is entitled for retrenchment compensation 15 days for each year continuous service i.e. total 90 days and one month's notice in lieu of notice. Accordingly I record my finding on Point No. 2.

17. In the result, award is passed as under:—

- (1) The action of the management of Distt. Engineer (Phones), Guna is terminating the services of Manish Dubey, S/o Shri Shivprasad Dubey w.e.f. 1-2-98 is illegal.
- (2) 2nd party is directed to pay compensation Rs. 1,50,000/- wages for 30 days in lieu of notice and wages for 90 days towards retrenchment compensation.

The above amount shall be paid at the rate of wages paid to the 1st party workman at the time of his termination of his services. Amount as per above order be paid within six weeks. In case of default, the amount shall carry interest at the rate of 9% per annum from date of order to its realization.

R. B. PATLE, Presiding Officer
नई दिल्ली, 20 जून, 2013

कानून 1314 —ऑद्योगिक विवाद अधिनियम 1947
(1947 का 14) की धारा के अनुसरण में केन्द्रीय

सरकार चीफ जनरल मैनेजर, डिपार्टमेंट ऑफ टेलीकाम एवं अदर्स के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या सी.जी.आई.टी.एल.सी.आर.10/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.06.2013 को प्राप्त हुआ था।

[सं.एल.-40012/387/2000-आई.आर. (डी.यू.)]

जोहन तोपनो, अवर सचिव

New Delhi, the 20th June, 2013

S.O.1314.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/LC/R/10/2001) of the Central Government Industrial Tribunal cum Labour Court Jabalpur as shown in the Annexure in the Industrial Dispute between the Chief General Manager, Deptt. of Telecom and others and their workman, which was received by the Central Government on 12.06.2013.

[No. L-40012/387/2000-IR(DU)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT

INDUSTRIAL TRIBUNAL-CUM-LABOUR-COURT, JABALPUR

NO/CGIT/LC/R/10/2001

SHRI R.B.PATLE, Presiding Officer

Shri Rameshwari Dayal Shrivastava,
S/o Shri K.N. Shrivastava,
Opposite Middle School, Kolupura,
Guna

...Workman

Versus

Chief General Manager,
Dept. of Telecommunication,
Hoshangabad Road, MP Circle,
Bhopal (MP)
Distt. Engineer (Phones),

...Managements

AWARD

Passed on 26th day of April 2013

1. As per letter dated 17-11-2000 by the Government of India, Ministry of Labour, New Delhi, reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L- 40012/387/2000/ IR(DU). The dispute under reference relates to:

"Whether the action of the management of Distt. Engineer (Phones), Guna in terminating Shri

Rameshwari Dayal Shrivastava, S/o Shri Kailash Narayan Shrivastava w.e.f. 21-2-98 is justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices have been issued to the parties. 1st party workman submitted statement of claim at Page 4/1 to 4/4. The case of Ist party workman is that he was appointed from December 1992 in General Cadre by IIInd party management. That workman was doing work of various natures assigned to him by the management. He was continued in service till 21-2-98 without any break. He had completed 240 days continuous service during each of the calendar years. He claims to have acquired status of workman under Section 25-B of I.D. Act. that from 21-2-98, he was prevented from work, his services were terminated orally without notice, without retrenchment compensation, seniority list of employees was not displayed.

3. Ist party workman submits that he was denied equal wages for equal work. His services were not regularized. Inspite of repeated efforts, he was not permitted to work, termination of his services is in violation of provisions of I.D. Act. Section 25-F is not complied. The services are terminated without enquiry or according hearing. That IIInd party has violated Section 25-F, G & H of I.D. Act and Rule 77 of I.D. Act. Ist party workman prays for setting aside his termination. He also prays for reinstatement with back wages.

4. IIInd party filed Written Statement at page 6/1 to 6/3. IIInd party denied the claim of 1st party workman. It is contended that the Ist party workman was not appointed on any post in Telecom deptt. since December 1992. The contentions of 1st party workman are false. That the department of IIInd party engages casual labours for petty works. The services of such employees are terminated after completion of work. It does not amount to retrenchment since 1985. IIInd party has totally stopped muster roll. That workman was not in the record of his working which requires verification.

5. IIInd party submits that Ist party workman has not completed 240 days continuous service. The provisions of Section 25-B of I.D. Act are not applicable. That Ist party workman is not entitled to regularization of services as prayed by him. The management cannot engage any person without work. Rather it is contention of IIInd party that Ist party workman was never appointed, neither he has been retrenched. The local officer as per requirement engaged labour time to time. Therefore there is no question of prohibiting workman from his duties or termination of his duties. It is further contended that few labour were engaged by local officers for some paid works after completion of work service of such labours were automatically terminated. Payment of labours also given as per work on unnoted in the department in violation of Section 25-F, G & H of I.D. Act is denied. It is denied that workman had completed 240 days service during any of

the calendar year. Appointment of casual labours has been banned since 31-3-1985 in the department. That it is contended that since 1998, workman were engaged on contract basis through tender. As per the terms and conditions of tender, the tenderer supplied the workman if department needs to complete the specific work. On such contentions IIInd party denied violation of any of the statutory provisions and prays for rejection of the relief prayed the Ist party workman.

6. Ist party workman submitted rejoinder at Page 8 of the record. The contentions in Written Statement of IIInd party are denied. It is submitted that the total discontinuation of must roll in department of IIInd party is beyond his comprehension. He reiterates that from December 1992 he was continuously working with the department of IIInd party. He had completed 6 years continuous service, he had completed 240 days working during each of the calendar year. He has reiterated violation of statutory provisions that the provisions of I.D. Act and prayed for reinstatement with back wages.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the termination of Ist party workman Shri Rameshwar Dayal Shrivastava, S/o Kailash Narayan Shrivastava by management w.e.f. 21-2-98 is legal?

(ii) If so, to what relief the workman is entitled to?"

Ist party workman is entitled to compensation Rs.1,50,000 and retrenchment compensation, notice pay as per final orders.

REASONS

8. Ist party workman is challenging his oral termination from 21-2-98. He alleges violation of Section 25-F, G & H and Rule 77 of I.D. Act. He had worked 240 days continuously during each of the calendar years. IIInd party denied all those contentions. Rather it is contended that Ist party workman was never appointed on any post, there is no question of termination or violation of provisions of I.D. Act.

9. Ist party workman filed affidavit of his evidence. He has stated on oath that he was appointed on 21-12-92 and he was in continuous employment of IIInd party without any break. He had completed 240 days continuous service during each of calendar year. His services were orally terminated from 21-2-98. He was not given notice nor paid retrenchment compensation. In his cross-examination, he has stated that he was working on daily wages, no

appointment order was given to him, his name was not sponsored through Employment Exchange. He had not received interview letter. He was doing cleaning work in switch room. He denies that he was working under contractor. Ist party workman is absolutely not cross-examined about his appointment on 21-12-92 or his service discontinued from 21-2-98. In his cross-examination, the statement that he had completed 240 days is not challenged. His evidence that he was not given notice, he was not given retrenchment compensation and violation of Section 25-F, G & H is also not challenged in the cross-examination.

10. Evidence of management's witness Shri Vasant Kumar Pateria on affidavit, he says that the workman was never appointed, no appointment letter was given. In para-4 of his affidavit, he states on oath the employees doing the work was of casual nature as per exigency. That the work of laying cable is discontinued, electronic exchanges are established and therefore workman are not required. That the employees were engaged as per exigencies in post. The workman has not completed 240 days continuous service in any of the calendar year.

11. In his cross-examination, management's witness says that he has stated in his affidavit, information received is as per record and not as per personal knowledge received by him. That he had seen payment voucher, muster roll, work order. On its basis, he had filed affidavit of evidence, he has seen those documents around 1997 but did not recollect exact year. The documents seen by him are not produced on record. That he had seen the record in April 2010. He claims ignorance for which period the Ist party workman has filed the proceeding. That he had seen payment voucher for the period 1992 to 1996. That he was working at Sagar during 1992 to 1998, he was not working at Guna during the said period. That he had not seen record of engaging casual labours. The management's witness is changing his version at different stages when he has seen the record about payment voucher, work order etc., how those documents are not produced. It is clear from his evidence that the best evidence is withheld from court for the reasons unknown. The management witness in his further cross-examination has stated that during his tenure, the casual labour was not taken on the muster roll. The practice not maintaining muster roll despite engaging casual labour, not maintaining vouchers itself is device to avoid the provisions of I.D. Act. The document Exhibit W-2 copy of reply filed before ALC shows that casual labours were engaged and wages were paid, their services were discontinued after completion of work. The documents are contrary to contentions of IIInd party that workman was never engaged.

12. Though management has pleaded that casual workers were engaged from 1998, no documents are produced on record as to which of the contractor was engaged, whether such contractor had obtained licence

for providing workman to the department as provided under Section 10 of the Contract Labour Act. During course of argument, it was heavily in dispute whether the workman had completed 240 days continuous service. Workman has filed application No. 9 for production of documents i.e. muster roll, payment voucher etc. The said application was opposed by management and ultimately rejected after hearing the parties. The rejection of application does not relieve 2nd party management from producing best evidence in his custody. Parties cannot be terminated to withhold any evidence. The evidence of 1st party workman is tested on probabilities with the evidence of management's witness. The evidence of workman that he was appointed in 1992 and continued till 21-2-98 is not challenged. It is not also challenged that he has worked 240 days service during each of the calendar year. The said part of the evidence of 1st party workman has remained unchallenged and therefore I do not find any reason to disbelieve said evidence. So far as evidence of witness of 2nd party, he has seen the record of payment voucher, muster roll, work order but has not produced such record and therefore his evidence appears to be not reliable. He is suppressing relevant records from Court. For above reasons, I have no hesitation to hold that the workman has completed 240 days continuous service during each of the calendar year, no notice was issued for termination of his service, he was not paid retrenchment compensation, Seniority list of the employees working in 2nd party was not displayed at the time of termination of 1st party workman. Thus the services of 1st party workman are terminated in violation of Section 25-F, G & H of I.D. Act. The termination of services of workman is therefore illegal. For above reasons, I record my finding on Point No.1 in Negative.

13. Point No.2. The question is to what relief the 1st party workman is entitled. His evidence in cross-examination shows that his name was not sponsored from employment exchange. He has not received any interview call. Any procedure for his appointment was not followed. The evidence of witness of management that the work has completely changed, the digital telephone exchanges are installed are not challenged in his cross-examination. His evidence that casual workers are not required for laying cables also remained unchallenged. Keeping those aspects in view, I proceed to deal with the citations relied by the counsel for parties.

14. Learned counsel for workman relies on —

"Ratio held in Case of Shri Anoop Sharma Versus Executive Engineer, Public Health Division No.1, Panipat (Haryana) reported in 2010-5-SCC-497. Their Lordship in the above cited case confirmed order of reinstatement filed by Labour Court for violation of Section 25-F (a) and (b) of I.D. Act. As the management has failed to prove compliance of clause (a) and (b) of Section 25-F, delay in sending DD after

about three months of termination was not explained by the employer.

The facts of present case are not comparable. The ratio cannot be beneficially applied to the present case at hand for the reasons that the reinstatement was directed for violation of Section 25-F Clause A & B of I.D. Act. There was no pleading about initial engagement was not legal. The contention was 1st time raised before the Hon'ble High Court. In the present case, 1st party workman has been cross- examined on the point he was not sponsored through Employment Exchange, he had not received interview calls for his appointment.

Next reliance is placed on ratio held in case of Shri Ramesh Kumar versus State of Haryana reported in 2010-2 Supreme Court Cases 543. Their Lordship of the Apex Court upheld Labour Court's direction for reinstatement with continuity of service but with concession of workman to forgo back wages. Their Lordship held in case of termination, what is required to be seen is whether he has completed 240 days of service in preceding 12 months or not. If he has then the service cannot be terminated without giving notice or compensation in lieu of it in terms of Section 25-F. Though appointment on Public post cannot made in contravention of recruitment rules and constitutional scheme of employment, contention that initial appointment of appellant was contrary to recruitment rules and constitutional scheme of employment was not raised either before Labour Court or High Court at the first instance.

The ratio held in the case does not fully support the claim of 1st party workman for reinstatement with back wages.

In case of ratio held in case between Maharashtra State Board of Secondary and Higher Secondary Education, Amravati and another versus Sanjay Krishnarao Shrungare, Amravati reported in 2008 II CLR-301. Their Lordship observed on examination of record, the Division Bench held that while there is no doubt that the burden did not lie on the appellants to disprove that the respondents had worked for 240 days, if the appellants were in possession of some evidence in respect of the services rendered by the respondents, there is no reason why it should not have tendered such evidence. If the appellant chose to keep from the Court the best evidence it had in respect of respondents employment, the appellant must blame itself.

The ratio held in the case is not dealing with the point of reinstatement or granting back wages if the termination is found illegal.

In case of Bhilwara Dugdh Utpadak Sahakari S.Ltd and Vinod Kumar Sharma in 2011-IV-LLJ-292 SC. Their Lordship held High Court is not entitled to interfere with the finding of fact recorded by Labour Court. It is held correct that the employer resorted to subterfuge to avoid

liabilities under various labour statutes by showing that the concerned workman are not their employees but are employees of a contractor or that they are merely daily wage or short term or casual employees when in fact they are doing the work of regular employees.

15. Learned counsel for IIInd party management Shri Khare relies on—

Judgment in Civil Appeal No. 3815/10 by supreme Court of India. In para-7 of the judgment, his Lordship observed it is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

The facts of present case shows that the digital telephone exchanges are installed, duties of laying cable is not available. The workman was not appointed after following procedure for recruitment therefore his services cannot be regularized as held in case of Secretary, State of Karnataka and others versus Umadevi and others reported in 2006-4- SCC-1 relied by learned counsel for IIInd party. The ratio held in said case is absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or adhoc employees appointed/recruited and continued for long in public employment dehors the constitutional scheme of public employment are not entitled to the benefit of regularization. Hon'ble Apex Court held in such cases, High Court may not be justified in interim directions.

16. Considering the evidence on record as Ist party workman was not appointed following prescribed procedure for recruitment, the work after installation of digital telephone exchange, work of laying cable is not available. In my considered view, workman is not entitled to reinstatement with back wages. As held by his Lordship in Civil Appeal No. 3815/2010, compensation in lieu of reinstatement would be the appropriate relief. Ist party workman has completed 6 years service. He is entitled for retrenchment compensation 15 days for each year continuous service i.e. total 90 days and one month's notice in lieu of notice. Accordingly, I record my finding on Point No.2.

17. In the result, award is passed as under:—

(1) The action of the management of Distt.

Engineer (Phones), Guna in terminating the services of Shri Rameshwar Dayal Shrivastava, S/o Kailash Narayan Shrivastava w.e.f. 21-2-98 is illegal.

(2) IIInd party is directed to pay compensation Rs.1,50,000 wages for 30 days in lieu of notice and wages for 90 days towards retrenchment compensation.

The above amount shall be paid at the rate of wages paid to the Ist party workman at the time of his termination of his services. Amount as per above order be paid within six weeks. In case of default, the amount shall carry interest at the rate of 9% per annum from date of order to its realization.

R.B. PATLE, Presiding Officer

नई दिल्ली, 20 जून, 2013

का.आ. 1315.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार चीफ जरनल मैनेजर, डिपार्टमेंट आफ टेलीकॉम एवं अदर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या सी.जी. आई.टी./एल.सी./आर./9/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.06.2013 को प्राप्त हुआ था।

[सं. एल-40012/388/2000-आई आर (डी यू)]

जोहन तोपनो, अवर सचिव

New Delhi, the 20th June, 2013

S.O.1315.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1997) the Central Government hereby publishes the Award (Ref. No. CGIT/LC/R/9/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the Chief General Manager, Deptt. of Telecom and others and their workman, which was received by the Central Government on 12.06.2013.

[No. L-40012/388/2000-IR(DU)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/9/2001

SHRI R.B.PATLE, Presiding Officer

Shri Ramkumar Shrivastava,
S/o Shri K.N.Shrivastava,
H/o Salim Chacha,

Shivaji Nagar,
Guna

.....Workman

Versus

Chief General Manager,
Dept. of Telecommunication,
Hoshangabad Road, MP Circle,
Bhopal (MP)
Distt. Engineer (Phones),
Guna

.....Managements

AWARD

Passed on this 26th day of April 2013

As per letter dated 17-11-2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-40012/388/2000-IR(DU). The dispute under reference relates to :

"Whether the action of the management of Distt. Engineer (Phones), Guna in terminating Shri Ramkumar Shrivastava, S/o Kailash Narayan Shrivastava w.e.f. 21-2-98 is justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices have been issued to the parties. Ist party workman submitted statement of claim at Page 4/1 to 4/4. The case of Ist party workman is that he was appointed from December 1992 in General Cadre by IIInd party management. That workman was doing work of various natures assigned to him by the management. He was continued in service till 21-2-98 without any break. He had completed 240 days continuous service during each of the calendar years. He claims to have acquired status of workman under Section 25-B of I.D. Act, that from 21-2-98, he was prevented from work, his services were terminated orally without notice, without retrenchment compensation, seniority list of employees was not displayed.

3. Ist party workman submits that he was denied equal wages for equal work. His services were not regularized. In spite of repeated efforts, he was not permitted to work, termination of his services is in violation of provisions of I.D. Act. Section 25-F is not complied. The services are terminated without enquiry or according hearing. That IIInd party has violated Section 25-F, G & H of I.D. Act and Rule 77 of I.D. Act. Ist party workman prays for setting aside his termination. He also prays for reinstatement with back wages.

4. IIInd party filed Written Statement at page 6/1 to 6/3. IIInd party denied the claim of 1st party workman. It is contented that the Ist party workman was not appointed on any post in Telecom Deptt. since December 1992. The contentions of 1st party workman are false. That the department of IIInd party engages casual labours for petty works. The services of such employees are terminated after completion of work. It does not amount to retrenchment

since 1985. IIInd party has totally stopped muster roll. That workman was not in the record of his working which requires verification.

5. IIInd party submits that Ist party workman has not completed 240 days continuous service. The provisions of Section 25-B of I.D. Act are not applicable. That Ist party workman is not entitled to regularization of services as prayed by him. The management cannot engage any person without work. Rather it is contention of IIInd party that Ist party workman was never appointed, neither he has been retrenched. The local officer engage casual employees as per exigencies. There is no question of prohibiting workman from his duties or termination of his duties. It is further contended that few labour were engaged by local officers for some paid works after completion of work service of such labours were automatically terminated. Payment of labours also given as per work on unnoted in the department in violation of Section 25-F, G & H of I.D. Act is denied. It is denied that workman had completed 240 days service during any of the calendar year. Appointment of casual labours has been banned since 31-3-1985 in the department. That it is contended that since 1998, workman were engaged on contract basis through tender. As per the terms and conditions of tender, the tenderer supplied the workman if department needs to complete the specific work. On such contentions IIInd party denied violation of any of the statutory provisions and prays for rejection of the relief prayed by the Ist party workman.

6. Ist party workman submitted rejoinder at Page 8 of the record. The contentions in Written Statement of IIInd party are denied. It is submitted that the total discontinuation of must roll in department of IIInd party is beyond his comprehension. He reiterates that from December 1992 he was continuously working with the department of IIInd party. He had completed 6 years continuous service, he had completed 240 days working during each of the calendar year. He has reiterated violation of statutory provisions that the provisions of I.D. Act and prayed for reinstatement with back wages.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the termination of Ist party workman Shri Ramkumar Shrivastava, S/o Kailash Narayan Shrivastava by management w.e.f. 21-2-98 is legal?
In Negative

(ii) If so, to what relief the workman is entitled to?"
Ist party workman is entitled to compensation Rs.1,50,000 and notice pay as per final orders.

REASONS

8. Ist party workman is challenging his oral termination from 21-2-98. He alleges violation of Section 25-F , G & H and Rule 77 of I.D.Act. He had worked 240 days continuously during each of the calendar years . IIInd party denied all those contentions. Rather it is contended that Ist party workman was never appointed on any post, there is no question of termination or violation of provisions of I.D.Act.

9. Ist party workman filed affidavit of his evidence. He has stated on oath that he was appointed on 21-12-92 and he was in continuous employment of IIInd party without any break. He had completed 240 days continuous service during each of calendar year. His services were orally terminated from 21-2-98. He was not given notice nor paid retrenchment compensation. In his cross-examination, he has stated that he was working on daily wages, no appointment order was given to him, his name was not sponsored through Employment Exchange. He had not received interview letter. He was doing cleaning work in switch room. He denies that he was working under contractor. Ist party workman is absolutely not cross-examined about his appointment on 21-12-92 or his service discontinued from 21-2-98. In his cross-examination, the statement that he had completed 240 days is not challenged. His evidence that he was not given notice, he was not given retrenchment compensation and violation of Section 25-F , G & H is also not challenged in the cross-examination.

10. Evidence of management's witness Shri Vasant Kumar Pateria on affidavit, he says that the workman was never appointed, no appointment letter was given. In para-4 of his affidavit, he states on oath the employees doing the work was of casual nature as per exigency. That the work of laying cable is discontinued, electronic exchanges are established and therefore workman are not required. That the employees were engaged as per exigencies in post. The workman has not completed 240 days continuous service in any of the calendar year.

11. In his cross-examination, management's witness says that he has stated in his affidavit, information received is as per record and not as per personal knowledge received by him. That he had seen payment voucher, muster roll, work order. On its basis, he had filed affidavit of evidence, he has seen those documents around 1997 but did not recollect exact year. The documents seen by him are not produced on record. That he had seen the record in April 2010. He claims ignorance for which period the Ist party workman has filed the proceeding. That he had seen payment voucher for the period 1992 to 1996. That he was working at Sagar during 1992 to 1998, he was not working at Guna during the said period. That he had not seen record of engaging casual labors. The management's witness is changing his version at different stages when he has seen the record about payment voucher, work order etc. , how

those documents are not produced. It is clear from his evidence that the best evidence is withheld from court for the reasons unknown.

12. Though management has pleaded that casual workers were engaged from 1998, no documents are produced on record as to which of the contractor was engaged, whether such contractor had obtained licence for providing workman to the department as provided under Section 10 of the Contract Labour Act. During course of argument, it was heavily in dispute whether the workman had completed 240 days continuous service. Workman has filed application No. 9 for production of documents i.e. muster roll, payment voucher etc. The said application was opposed by management and ultimately rejected after hearing the parties. The rejection of application doesnot relieve IIInd party management from producing best evidence in his custody. Parties cannot be terminated to withhold any evidence. The evidence of Ist party workman is tested on probabilities with the evidence of management's witness. The evidence of workman that he was appointed in 1992 and continued till 21-2-98 is not challenged. It is not also challenged that he has worked 240 days service during each of the calendar year. The said part of the evidence of Ist party workman has remained unchallenged and therefore I donot find any reason to disbelieve said evidence. So far as evidence of witness of IIInd party, he has seen the record of payment voucher, muster roll, work order but has not produced such record and therefore his evidence appears to be not reliable. He is suppressing relevant records from Court. For above reasons, I have no hesitation to hold that the workman has completed 240 days continuous service during each of the calendar year, no notice was issued for termination of his service, he was not paid retrenchment compensation, Seniority list of the employees working in IIInd party was not displayed at the time of termination of Ist party workman. Thus the services of 1st party workman are terminated in violation of Section 25-F G & H of I.D. Act. The termination of services of workman is therefore illegal. For above reasons, I record my finding on Point No.1 in Negative.

13. Point No. 2- The question is to what relief the Ist party workman is entitled. His evidence in cross-examination shows that his name was not sponsored from employment exchange. He has not received any interview call. Any procedure for his appointment was not followed. The evidence of witness of management that the work has completely changed, the digital telephone exchanges are installed are not challenged in his cross-examination. his evidence that casual workers are not required for laying cables also remained unchallenged. Keeping those aspects in view, I proceed to deal with the citations relied by the counsel for parties.

14. Learned counsel for workman relies on —

"Ratio held in Case of Shri Anoop Sharma Versus

Executive Engineer, Public Health Division No.1, Panipat (Haryana) reported in 2010-5-SCC-497. Their Lordship in the above cited case confirmed order of reinstatement filed by Labour Court for violation of Section 25-F (a) and (b) of I.D. Act. As the management has failed to prove compliance of clause (a) and (b) of Section 25-F, delay in sending DD after about three months of termination was not explained by the employer.

The facts of present case are not comparable. The ratio cannot be beneficially applied to the present case at hand for the reasons that the reinstatement was directed for violation of Section 25-F Clause a & b of I.D. Act. There was no pleading about initial engagement was not legal. The contention was 1st time raised before the Hon'ble High Court. In the present case, 1st party workman has been cross-examined on the point he was not sponsored through Employment Exchange, he had not received interview calls for his appointment.

Next reliance is placed on ratio held in case of Shri Ramesh Kumar Versus State of Haryana reported in 2010-12 Supreme Court Cases 543. Their Lordship of the Apex Court upheld Labour Court's direction for reinstatement with continuity of service but with concession of workman to forgo back wages. Their Lordship held in case of termination, what is required to be seen is whether he has completed 240 days of service in preceding 12 months or not. If he has then the service cannot be terminated without giving notice or compensation in lieu of it in terms of Section 25-F. Though appointment on Public post cannot made in contravention of recruitment rules and constitutional scheme of employment, contention that initial appointment of appellant was contrary to recruitment rules and constitutional scheme of employment was not raised either before Labour Court or High Court at the first instance.

The ratio held in the case does not fully support the claim of 1st party workman for reinstatement with back wages.

In case of ratio held in case between Maharashtra State Board of Secondary and Higher Secondary Education, Amravati and another Versus Sanjay Krishnarao Shrungare, Amravati reported in 2008 II CLR-301. Their Lordship observed on examination of record, the Division Bench held that while there is no doubt that the burden did not lie on the appellants to disprove that the respondents had worked for 240 days, if the appellants were in possession of some evidence in respect of the services rendered by the respondents, there is no reason why it should not have tendered such evidence,. If the appellant chose to keep from the Court the best evidence it had in respect of respondents employment, the appellant must blame itself.

The ratio held in the case is not dealing with the point of reinstatement or granting back wages if the termination is found illegal.

In case of Bhilwara Dugdh Utpadak Sahakari S.Ltd and Vinod Kumar Sharma in 2011-IV-LLJ-292 SC. Their Lordship held High Court is not entitled to interfere with the finding of fact recorded by Labour Court. It is held correct that the employer resorted to subterfuge to avoid liabilities under various labour statutes by showing that the concerned workman are not their employees but are employees of a Contractor or that they are merely daily wage or short term or casual employees when in fact they are doing the work of regular employees.

15. Learned counsel for 2nd party management Shri Khare relies on—

"Judgment in Civil Appeal No. 3815/10 by Supreme Court of India. In para-7 of the judgment, his Lordship observed it is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

The facts of present case shows that the digital telephone exchanges are installed, duties of laying cable is not available. The workman was not appointed after following procedure for recruitment therefore his services cannot be regularized as held in case of Secretary, State of Karnataka and Others Versus Umadevi and Others reported in 2006-4- SCC-1 relied by learned counsel for 2nd party. The ratio held in said case is absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or adhoc employees appointed/recruited and continued for long in public employment dehors the constitutional scheme of public employment are not entitled to the benefit of regularization. Hon'ble Apex Court held in such cases, High court may not be justified in interim directions.

16. Considering the evidence on record as 1st party workman was not appointed following prescribed procedure for recruitment, the work after installation of digital telephone exchange , work of laying cable is not available. In my considered view, workman is not entitled to reinstatement with back wages. As held by his Lordship in Civil Appeal No. 3815/2010, compensation in lieu of reinstatement would be the appropriate relief. 1st party workman has completed 6 years service. He is entitled for retrenchment compensation 15 days for each year continuous service i.e. total 90 days and one month's notice

in lieu of notice. Accordingly I record my finding on Point No.2.

17. In the result, award is passed as under:-

(1) The action of the management of Distt. Engineer (Phones), Guna in terminating the services of shri Ramkumar Shrivastava, S/o Kailash Narayan Shrivastava w.e.f. 21-2-98 is illegal.

(2) Ilnd party is directed to pay compensation Rs.1,50,000/- wages for 30 days in lieu of notice and wages for 90 days towards retrenchment compensation.

The above amount shall be paid at the rate of wages paid to the Ist party workman at the time of his termination of his services. Amount as per above order be paid within six weeks. In case of default, the amount shall carry interest at the rate of 9% per annum from date of order to its realization.

R.B. PATLE, Presiding Officer

नई दिल्ली, 20 जून, 2013

का.आ 1316.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैजर, (एच आर) स्कूटर्स इंडिया लिमिटेड के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 25/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.06.2013 को प्रत हुआ था

[सं एल-42012/06/2009 आई आर (डी यू)]

जोहन तोपनो, अवर सचिव

New Delhi, the 20th June, 2013

S.O.1316.—in pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (Ref. No.25/2009) of the Central Government Industrial Tribunal cum Labour Court Lucknow as shown in the Annexure in the Industrial Dispute between the employers in relations to the Manager, (HR) Scooters India Ltd. their workman, which was received by the Central Government on 12.06.2013.

[No. L-42012/06/2009-IR(DU)]

JOHAN TOPNO, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL— CUM-LABOUR COURT, LUCKNOW

PRESENT : Dr. MANJU NIGAM, Presiding Officer

I.D. No. 25/2009

Ref. No. L-42012/6/2009-IR(DU) dated: 17.07.2009

BETWEEN

Shri Phool Chand S/o Shri Gunraj
C/o Om Prakash, Behind St. Thomas School
Sparsh General Store
Shanti Nagar, Sarojini Nagar
Lucknow — 226 008

AND

The Manager (HR)
Scooters India Limited
Sarojini Nagar
Lucknow — 226 008

AWARD

1. By order No. L-42012/6/2009-IR(DU) dated: 17.07.2009 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Phool Chand S/o Shri Gunraj C/o Om Prakash, Behind St. Thomas School, Sparsh General Store, Shanti Nagar, Sarojini Nagar, Lucknow and the Manager (HR), Scooters India Limited, Sarojini Nagar, Lucknow for adjudication to this CGIT-cumLabour Court, Lucknow.

2. The reference under adjudication is:

"Whether the action of the management of scooters india ltd., lucknow in terminating the services of their workman shri phool chand w.e.f. 23/07/1983 is legal and justified? If not, what relief the workman concerned is entitled to?"

3. It is admitted case of the parties that the workman, Phool Chand was, initially, appointed as a casual labour thereafter was appointed as unskilled labour w.e.f. 01.08.1975 with the opposite party i.e. Scooters India (hereinafter referred to as Company). The workman was served upon a charge sheet dated 30.06.1983 for alleged misconduct of claiming & getting reimbursement regarding false LTC claim; and consequently, was dismissed from the Company vide order dated 23.07.1983.

4. The workman has alleged that the Company issued said charge sheet to 47 workmen under Section 23 (1) Of the Certified Standing Order and dismissed some of them, including workman, without affording him sufficient time to reply the charge sheet or an opportunity to defend himself. He has alleged that the management acted arbitrarily while dismissing him without following the principles of natural justice in his case. It has been alleged by the workman that the management discriminated in imposing punishment as the workman was dismissed; whereas other workmen had been forgiven by giving them 'warning' only while some of them were acquitted of the charges. It has been submitted that the other workmen

who have been dismissed on 23.07.1983 challenged the action of the management in Labour Court and the Labour Court passed an order of reinstatement of them with back wages; and they were reinstated by the management with back wages. The workmen who were reinstated are viz. Shri Jila Jeet Pal, L.N. Tiward, A.K. Singh, Vinod Singh, Mohammad Naseem Khan, Vaseem, K.K. Bajpai, Babu Lal, Raja Ram, S. Pal Singh A.H. Khan, Bajnath Yadav etc. Accordingly, the workman has prayed that his dismissal dated 23.07.1983 be cancelled and he be reinstated with back wages.

5. The management of the Scooters India denied the claim of the workman by filing its Written Statement wherein it has emphasized over the fact that the present claim is stale one as the cause of action accrued on 23.7.1983 and the matter has been raised before this Tribunal after lapse of about 26 years. The management has further submitted that the workman was afforded 48 hours for submission of his reply over the charge sheet and on non-receipt of any reply from the workman, his services were dismissed after considering all the fact and circumstances of the case and there is no illegality in it. Further, it has submitted that the workman agitated his termination before Labour Court under Section 11 — C of U.P. Industrial Disputes Act; but the same was dismissed by the Labour Court vide their order dated 22.10.1986 as being not maintainable. Thereafter, the workman challenged the said order of Labour Court before Hon'ble High Court, Allahabad in Writ Petition No. 4377 (SS) of 1993; which was dismissed vide order dated 09.04.2008. The workman filed SLP before Hon'ble Supreme Court against order dated 09.04.2008 of Hon'ble High Court and the same too was dismissed by Hon'ble Apex Court vide order dated 17.02.2009.

6. As regard reinstating other workmen, the management has submitted that the case of the workman, Phool Chand is entirely different with those of workmen who have been reinstated by the management. It is stated that the workman entered into a settlement dated 09.09.1986 through the General Secretary of his recognized union; whereby he finally settled his dispute and according to which he had received a sum of Rs. 30,000/- as lump sum compensation in full and final settlement of his claim with the Company. But the other workmen who have been reinstated did not enter into any settlement with the management, therefore, they were given reinstatement in compliance of order of Hon'ble High Court. The management has submitted that the workman through his representative union entered into a settlement dated 09.09.1986 with the management of Scooters India; according to which he was given Rs. 30,000/- as compensation in full and final settlement of his claim along with other admissible dues i.e. Gratuity. The terms of settlement restrains the workman to raise any dispute regarding his termination of services w.e.f. 23.7.1983 either individually or through any union or otherwise before any Court or Authority. Hence, the

present claim is not maintainable. Accordingly, the management has prayed that the claim of the workman be rejected out rightly as devoid of merit.

7. The workman has filed rejoinder whereby it has only reiterated his averments in the statement of claim and has not introduced any new fact.

8. The parties have filed photocopies of various documents in support of their respective claim. The workman has examined itself, Shri Jila Jeet Pal and Shri Jai Prakash whereas the management has examined Shri A.K. Chatterjee, Manager (HR) in support of their stands. Parties availed opportunity to cross-examine the witnesses of each other apart from forwarding oral arguments.

9. Heard authorized representatives of the parties and perused entire evidence on record.

10. The authorized representative of the workman has argued that the management of the Scooters India acted in arbitrary manner in not conducting any inquiry and passing the order of dismissal on non-receipt of any reply from the workman within 48 hours. The action of the management while terminating the workman without holding enquiry and without giving any opportunity of hearing or defence to the workman is against principle of natural justice. It has further been submitted that the management made discrimination by giving lesser punishment and forgiving other workmen who were charged with same charges and imposing punishment of dismissal on the workman. It was further argued that the management had reinstated K.K. Bajpai, Babu Lal and Raja Ram similarly situated workmen while spared him.

11. In rebuttal, the authorized representative of the management has contended that the action of management in not conducting any enquiry and giving only 48 hours time to reply the charge sheet was just and was in accordance with the standing orders of the Company. He has submitted that had the time given was insufficient then the workman might have requested of extra time; but he did not do so and accordingly, the order of dismissal was passed after considering facts and circumstances of the case and there is no illegality in it. He has further submitted that the case of the workman is different with that of Babu Lal as the workman, Phool Chand through his representative union entered into a settlement with the management of Scooters India vide dated 09.09.1986 whereas Babu Lal did not enter into any settlement with the management. According to said settlement the workman received Rs. 30,000/- as a lump-sum compensation in full and final settlement of his claim along with Gratuity. It was also provided in the said settlement that the workman, Phool Chand shall not agitate any dispute regarding his termination of services w.e.f. 23.07.1983 either individually or through any union or otherwise before any Court or Authority. The authorized representative has argued that Babu Lal was reinstated as

per orders of High Court being not entered into any settlement; whereas when workman entered into the settlement with the management and received the amount agreed between him and the management i.e. Rs. 30,000 as full and final settlement then neither he has any right to raise the present dispute nor to claim parity with Babu Lal. It was further argued that the cause of the workman was disposed of by the Hon'ble High Court vide their order dated 09.08.2008 and the SLP against the same was dismissed vide order dated 11.09.2008 by the Hon'ble Apex Court, thus, the matter of the workman has attained finality and there is nothing for this Tribunal to go through.

12. I have given my thoughtful consideration to the submissions of the authorized representatives of the parties and scanned entire pleadings of the both the parties and evidence adduced by the parties, documentary as well as oral.

13. The case of the workman in nut shell is that the management of the Scooters India acted in utter violation of principles of natural justice by not proving him proper time to reply the charges leveled against him and by not affording him proper opportunity to defend himself before an inquiry; and secondly the management discriminated in imposing lesser punishment to other similarly situated workman and also in not treating him at par with Babu Lal who was reinstated in view of the orders of Hon'ble High Court vide order dated 31.08.99 in which he too was a party. The workman in his evidence has tried to substantiate his version by examining himself and two other witnesses.

14. Per contra, the case of the management rests on the plea that its action was in accordance with the provisions contained in the Certified Standing Orders and the case of Babu Lal is different to that of the workman as Babu Lal never entered into any settlement with the management regarding termination of his services; whereas the workman, through his representative union entered into a settlement with the management; whereby the matter of his dismissal was settled by receiving amount of Rs. 30,000/- as full and final settlement of dispute and by giving an undertaking that he will not agitate his termination before any court of law or any forum. It is also the case of the management that since the matter of dismissal has been well tried and disposed of by Hon'ble High Vide order dated 09.04.2008 and its approval by Hon'ble Apex Court vide order dated 11.09.2008 there is nothing which has to be looked into by this Tribunal.

15. Admittedly, the workman, Phool Chand with other 47 employees were served upon a charge sheet for claiming false LTC claim and was given 48 hours time to reply to the said charge sheet. On failure of the workman in giving any reply to the said charge sheet, the management imposed punishment of dismissal vide order dated 23.7.1983. On dismissal the workman challenged the impugned order dated 23.7.1983 before Labour Court under Section 11-C of

the U.P. Industrial Disputes Act vide Misc Case No. 05/1985, which was rejected vide order dated 22.10.1986 being not maintainable. Meanwhile the workman had entered into a settlement with the opposite party management through General Secretary of his representative union vide dated 09.09.1986. The terms of settlement are quoted hereunder:

"TERMS OF SETTLEMENT

(1) That the Employers have agreed to pay Sri Phool Chand S/o Sri Gun Raj Navik an ex-gratia amount of Rs. 30,000/- (Rupees Thirty Thousand only) in full and final settlement of his case/claims leaving no claim of any nature whatsoever on the company except the gratuity, if any, payable to him and the provident fund, on ceasing to be an employee of the company. The amount, if any, outstanding against the workman concerned Sri Phool Chand in the books of Accounts of the Company shall be recovered and adjusted against the aforesaid amount of ex-gratia.

(2) That the relationship of master and servant or the Employer and employee between the workman concerned Sri Phool Chand S/o Sri Gun Raj Navik and he Company i.e. Scooters India Limited Lucknow shall cease to exist between the parties from the date of termination of the services of the workman concerned Sri Phool Chand i.e. 23.7.83 and it will be deemed that the workman concerned has resigned from the said date.

That after adjustment of Rs. 528/- (Rupees Five hundred twenty eight only) outstanding against the workman concerned Shri Phool Chand S/o Sri Gun Raj Navik in the books of Accounts of the Company, the balance amount of Rs. 29,472/- (Rupees Twenty nine thousand four hundred and seventy two only) is being paid by Account Payee Cheque No. 879621 dated 25.11.86 drawn on the Bank of Baroda, Hazratganj, Lucknow.

That the workman concerned Sri Phool Chand S/o Sri Gun Raj Navik has agreed not raise or agitate any dispute regarding termination of his service from the company w.e.f. 23.7.83 either individually or through any Union or otherwise before any court or authority.

That this fully and finally resolves the case/dispute in respect of the termination of the services of the workman concerned Sri Phool Chand S/o Sri Gun Raj Navik w.e.f. 23.07.83.

Representing Workman

| | |
|------------------|-----------------|
| -sd- | -sd- |
| 1. (PHOOL CHAND) | 1. (P.D. JOSHI) |
| -sd- | -sd- |
| 2. (S.B. SINGH) | 2. (S.N. SINGH) |
| 3.-sd- | -sd- |
| (S.S. RAI) | 3. (S.S. NAIR)" |

As a result of above quoted settlement the workman received a sum of Rs. 29,472 as a lump sum compensation in full and final settlement of his claim along with Gratuity. From perusal of the above terms of settlement it was agreed upon that the relationship of master and servant or the Employer and employee between the management of Scooters India and its workman, Sri Phool Chand shall ceased to exist; and it would be deemed that the workman concerned has resigned from the said date i.e. 23.07.83 and it was further agreed upon that the workman, Phool Chand shall not agitate any dispute regarding his dismissal of services w.e.f. 23.07.1983 either individually or through any Union or otherwise before any Court or Authority.

16. Even after having entered into a settlement on 09.09.1986 with the management that he will not agitate any dispute regarding his dismissal of services w.e.f. 23.07.1983 either individually or through any Union or otherwise before any Court or Authority; and on getting his case rejected by Labour Court vide order dated 22.10.1886 being not maintainable, the workman, Phool Chand preferred a Writ No. 4377 (S/s) of 1993 before Hon'ble High Court, Allahabd which was disposed of vide order dated 31.08.99; whereby Hon'ble High Court ordered the management to reinstate the workman and further directed that amount paid to him be adjusted from his dues. The management filed a review petition against order dated 31.08.99, which was allowed vide order dated 18.01.2000 and resultantly, the order dated 31.08.99 was recalled by the Hon'ble High Court. This led to re-consideration of the matter by the Hon'ble High Court, Allahabad. Hon'ble High Court while disposing of writ No 4377 (S/s) of 1993 considered all the relief (s) sought by the workman; which are enumerated hereunder :

- "(i) to issue a writ, order or direction in the nature of certiorari quashing the impugned order and judgment dated 22nd October, 1986 as passed by Opp. party No. 1, as contained in Annexure No. 3.
 - (ii) to issue a writ, order or direction in the nature of certiorari quashing the impugned order of termination dated 20/23- 07-1983 das passe by opp. party no. 3, as contained in Annexure No. 4.

- (iii) to issue a writ, order or direction in the nature of certiorari quashing the impugned agreement/ settlement dtd. 9.9.1986 das contained in Annexure No. 5 to the writ petition as entered between the opp. party no. 3 and 4 and any further agreement in pursuance thereon.
 - (iv) to issue a writ, order or direction in the nature of mandamus commanding the opp. Parties to consider the case of petitioner sympathetically and dispose of his representation as contained in Annexure No. 1 and 2 to this writ petition and to direct the opposite parties to reinstate him in service with continuity and with full back wages.
 - (v) to issue a writ, order or direction deemed fit and proper in the circumstances of the case in the interest of justice in favour of the petitioner including cost of this petition."

Hon'ble High Court in its order dated 09.04.2008 discussed all the issues/relief(s) sought by the workman. The operative portion of the said judgment dated 09.04.2008 is reproduced hereunder:

"In the present case undisputed position is that against various incumbents action has been taken for submitting false LTC bill including petitioner and against them order of dispensing of service has been passed. Various incumbents had adopted various channels/forum as provided under the law, for questioning the validity of the action taken. Various incumbents raised industrial dispute and qua them Labour Court had directed for reinstatement in service and substituting punishment of without holding of three increments with the rights of refund of amount realized to them as order being disproportionate. Sate group of persons have been reinstated back and are functioning. There is another group of persons whose services have been disengaged and they through their recognized Union of workmen came forward to settle their case. Petitioner is one of them, who gave affidavit and power of attorney in favour of Union to settle his case. Thereafter agreement/settlement ahs taken place, and as per the terms of settlement, relationship of master and servant was to cease from the date of termination of service and it was to be deemed that concerned workman has resigned form the said date. In respect of petitioner precise settlement has been made, which is evident from Annexure CA-3. The incumbents, who have been reinstated back cannot be said to be similarly situated, inasmuch as their disengagement had been set aside and as far as compromise is concerned same is nothing but package. Once voluntary settlement had been entered upon and the benefit of the same has been

undertaken and petitioners claim has been accepted as one of resignation then it cannot be said that there is disparity in the award of punishment. Consequently in the facts arid circumstances of the present case no relief can be accorded to the petitioner.

For the reasons stated above present writ petition as has been framed and drawn is dismissed."

Aggrieved from above order of Hon'bel High Court in review, the workman preferred an appeal before Hon'ble Apex Court which was dismissed vide their order dated 11.09.2008.

17. Thus, there left nothing to brood over the issue raised by the workman in the present industrial dispute before this Tribunal. From perusal of his pleadings, evidence and rival contentions of the management along with various orders given by Labour Court, Hon'ble High Court and Apex Court it is crystal clear that the there are two separate group of workmen who have similar cause of action i.e. they have been punished for similar misconduct; but the facts have changed in due course of time i.e. few have preferred litigation whereas other had entered into a settlement to resolve the matter, out side the court, permanently. The workman authorized its recognized union to settle the matter with the management. Not only this he too put his signatures over the terms of settlement then it is not open for him to say that he was not aware of the terms of settlement or its consequences or his signatures were obtained by misrepresentation or otherwise. Once he entered into a settlement and received its benefits as per terms of settlement, then he is legally bound to abide by the other terms also; which provides that the relationship of master and servant or the Employer and employee between the workman concerned Sri Phool Chand shall cease to exist between the parties from the date of termination of the services of the workman i.e. 23.07.1983 and it will be deemed that the workman concerned has resigned from the said date. Thus, once person resigns and receives dues i.e. gratuity etc. then he cannot claim for service in due course of time at one pretext or other as resignation tendered by a person is deemed to be voluntary action. Furthermore, as per other terms of settlement the workman was ought not to agitate his termination in future before any Forum or Court of law; but the workman committed a breach by entering into series of litigation, filing of petitions before Hon'ble High Court and Apex Court.

Likewise the workman cannot claim party with that group of persons in which Babu Lal is one of them because Babu Lal did not enter into any settlement with the management to resolve his termination finally. Therefore, in his case, action of the management in reinstating him does not seems to be biased. The workman was one who settled the matter of his termination with the management

and received one time lump sum amount towards compensation for his termination. Once he received the amount compensating the losses caused to him due to his termination then he cannot claim for his reinstatement on the basis of irregularities, if any, committed while terminating his services.

18. The workman before approaching to this Tribunal under provisions of the Industrial Disputes Act, 1947 approached Labour Court wherein his application was rejected being not maintainable. Then he filed a Writ No. 4377 (s/s) of 1993 before Hon'ble High Court with a long list of relief (s) and the same were allowed vide order dated 31.08.99 by the Hon'ble High Court. The management of the Scooters India filed review against order dated 31.08.99 and the same was allowed vide order dated 18.01.2000, recalling the order dated 31.08.99 and the writ petition No. 4377 (s/s) of 1993 was dismissed through a detailed order vide order dated 09.04.2008. The workman's special appeal against order dated 09.04.2008 before Hon'ble Apex Court too was dismissed, which resulted into finality of cause of the workman; but still he has come to this Tribunal with the same relief and the same are not tenable.

19. Thus, in view of the facts and circumstances of the case and verdicts of Hon'ble High Court and Apex Court in the matter of workman Phool Chand, the reference under adjudication is answered in negative; and I am of the considered opinion that the action of the management of Scooters India Ltd., Lucknow in terminating the services of their workman, Phool Chand w.e.f. 23.07.1983 is neither illegal nor unjustified and the workman is not entitled to any relief.

20. Award as above.

Lucknow.

27th May, 2013.

Dr. MANJU NIGAM, Preciding Officer

नई दिल्ली, 20 जून, 2013

का.आ. 1317.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार चीफ जरनल मैनेजर, डिपार्टमेंट ऑफ टेलीकम्यूनिकेशन के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या सी.जी. आई.टी/एल.सी./आर./93/99) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.06.2013 को प्राप्त हुआ था।

[सं. एल.-40012/80/1998 आई आर (डी यू)]

जोहन तोपनो, अनुभाग अधिकारी

New Delhi, the 20th June, 2013

S.O.1317.—in pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/LC/R/93/99) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in

the Industrial Dispute between the Chief General Manager, Deptt. of Telecommunication and their workman, which was received by the Central Government on 12.06.2013.

[No. L-40012/80/1998-IR(D)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/93/99

SHRI R.B. PATLE, Presiding Officer

Shri Badan Singh Kushwah,
S/o Surajpal Kushwah,
R/o Tomar Gali, Ramnagar,
Morena (MP) ...Workman

Versus

Chief General Manager,
Dept. of Telecommunication,
Hoshangabad Road,
MP Circle,
Bhopal ...Management

AWARD

Passed on this 15th day of April, 2013

1. As per letter dated 16-2-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No . L-40012/88/98/IR(DU). The dispute under reference relates to :

"Whether the action of the management of Chief General Manager, Telecom, Bhopal in terminating the services of Shri Badan Singh Kushwah, S/o Surajpal Kushwah is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties despite of repeated notice issued to workman, he failed to submit his statement of claim. 1st party workman proceeded ex parte on 26-2-08.

3. IIInd party management submitted Written Statement at Page 10/1 to 10/2. IIInd party management denies that 1st party workman was working as watchman. It is denied that the 1st party had completed 240 days continuous service. According to the IIInd party, name of 1st party workman is not appearing in muster roll. He was not working with IIInd party management. The department engaged casual employees, Identity Card was given to him for convenience, he further contended that as 1st party workman was not employed by IIInd party, there was no

point of illegally terminating his services. IIInd party prays for rejection of the reliefs prayed by workman.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Chief General Manager, Telecom, Bhopal in terminating the services of Shri Badan Singh Kushwah, S/o Surajpal Kushwah is legal and justified?

In Affirmative

(ii) If so, to what relief the workman is entitled to?" Reliefs prayed by workman is rejected.

REASONS

5. 1st party workman is challenging legality of termination of his services as per the dispute under reference. However 1st party workman failed to submit statement of claim. In Written Statement filed by IIInd party, it has denied that 1st party was engaged on its establishment. In affidavit of evidence of Shri Sunil Kumar Jain for the management, it is denied that 1st party was working on his establishment , the name of 1st party was appearing in muster roll. There was no point of illegally terminating his services in 1996. The workman remained absent. The witness is not cross-examined. Evidence of management witness remained unchallenged. The workman has not participated in the proceeding, has not filed statement of claim neither filed evidence to substantiate his claim. Therefore I do not find substance in the contention of the workman. For above reasons, I record my finding in Point No. 1 in Affirmative.

6. Point No. 2- Relief claimed by workman is rejected.

7. In the result, award is passed as under:-

- (1) The action of the management of Chief General Manager, Telecom, Bhopal in terminating the services of Shri Badan Singh Kushwah, S/o Surajpal Kushwah is just and legal.
- (2) Reliefs prayed by the 1st party workman is rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 20 जून, 2013

कानून 1318 —औद्योगिक विवाद अधिनियम, 1947

(1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डाइरेक्टर, सैन्यल फर्म मशीनरी ट्रेनिंग एण्ड ट्रेंटिंग इन्सटीट्यूट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट

(संदर्भ संख्या रेफरेंस नं. 168/97) को प्रकाशित करती है जो केन्द्रीय सरकार को 12-06-2013 को प्राप्त हुआ था।

[सं. एल-42012/52/1996-आईआर(डीयू)]

जोहन तोपनो, अवर सचिव

New Delhi, the 20th June, 2013

S.O. 1318.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/168/97) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial dispute between the Director, Central Farm Machinery Training & Testing Institute and their workman, which was received by the Central Government on 12.06.2013

[No. L-42012/52/1996-IR(DU)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/168/97

SHRI R.B. PATLE, Presiding Officer

Smt. Chote Bai,
w/o Shri Kalsuram,
Behind Rly Station,
Godi Mohalla,
Budli,
Distt. Sehore (MP) ...Workman

Versus

The Director,
Central Farm Machinery Training &
Testing Institute,
Tractor Nagar,
PO Budni,
Distt. Sehore (MP) ...Management

AWARD

Passed on this 12th day of April, 2013

1. As per letter dated 30-5-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-42012/52/96-1R(DU). The dispute under reference relates to:

"Whether the action of the management of Central Farm Machinery Training and Testing Institute, Budni in terminating the services of Smt. Chote Bai, w/o Kalsuram is legal and justified? If not, to what

relief the workman is entitled?"

2. 1st party workman is challenging his termination of services in the dispute under reference even after issuing notices, he has not participated in the proceeding, no statement of claim is filed. 1st party is proceeded ex parte on 10-4-08.

3. 2nd party management also not filed Written Statement. From conduct of the 1st party, it is clear that the parties are not pursuing or participating in the dispute.

4. In the result, award is passed as under:—

"Reference is disposed off as No Dispute Award."

R.B. PATLE, Presiding Officer

नई दिल्ली, 20 जून, 2013

कानून 1319.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जरनल मैनेजर, आडिनेन्स पैन्स्ट्री, कटनी के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण जबलपुर के पंचाट (संदर्भ संख्या सी.जी.आई.टी./एल.सी./आर./159/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.06.2013 को प्राप्त हुआ था

[सं. एल-14011/09/2002 आई आर (डी यू)]

जोहन तोपनो, अवर सचिव

New Delhi, the 20th June, 2013

S.O. 1319.—in pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (Ref. No. CGIT/LC/R/159/2002) of the Central Government Industrial Tribunal cum Labour Court Jabalpur as shown in the Annexure, in the Industrial Dispute between the GeneralManager, Ordnance Factory, Katni, which was received by the Central Government on 12.06.2013.

[No. L-14011/09/2002-IR(DR)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/159/2002

SHRI R.B.PATLE, Presiding Officer

Shri Dashrath Tiwari,

General Secretary,

Mazdoor Sangh Ayudh Nirmani,

1/1A Type East Land,

Ordnance Factory, Katni

Jabalpur (MP)

...Workman/Union

Versus

General Manager,
Ordnance Factory,
Katni, Jabalpur

...Management

AWARD

Passed on this 7th day of May 2013

1. As per letter dated 31-10-2002 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-14011/9/2002-IR(DU). The dispute under reference relates to:

"Whether the action of the management of Ordnance Factory, Katni in not paying wages equal to LDC to S/Shri Vijay Shankar Shukla, Rakesh Kumar Verma, Vijay Kumar Shivhare, Balram Prasad Upadhyaya and G.Toppo, Ticket Sorter is justified? If not, to what relief the concerned workmen are entitled?"

2. After receiving reference, notices were issued to the parties. 1st party workman filed Statement of Claim at Page 2/1 to 2/4. The case of 1st party workman is that they were appointed in the post of Ticket Sorter in the year 1980 in Ordnance Factory, Katni. Presently they were working as labour Category-A. They were appointed in pay scale 196-232. They were recruited through Written Test followed by personal interview, no written test and interview is prescribed for appointment for the post of Ticket Sorter but they were required to pass test prescribed for the post of LDC.

3. It is further contended by workman that test of LDC is passed by them. They ought to have been appointed on the post of LDC but they were appointed on the post of Ticket Sorter. According to job specification, the job shown to Ticket Sorter is that he should be able to identify English letters and sort out the metal tokens, passes etc. and hang them on the Board serially or as required. that all those workmen since their appointment are discharging duties of LDCs , reperforming duties of clerical nature which are- (i) day to day basis attendance based on mustering in/out and casualty report submitted in time office by various sections/shops, (ii) Booking of casual overtime/systematic overtime on receipt of sanction of the competent authority, (iii) That endorsement of annual increment, leave and accident leave on receipt of authorized documents, (iv) Calculation of late arrival time while mustering In/Out deduction of sort/petty leave period day to day basis and endorsement thereof, (v) Calculation/ totaling of whole month working at the end of month for the purpose of payment calculation & (vi) Calculation of casual/systematic overtime performed by the each individuals in the particular month.

4. It is further submitted that though all those workmen are doing job of clerical nature, they are paid salary of Ticket Sorter Pay Scale 196- 232 (Revised- 759-940), in 4th Pay Commission- revised to Rs.2550- 3090. That the LDC, UDC, Supervisors, Chargeman in time office are transferred to other section. The Ticket Sorter are asked to perform their job which is purely on clerical nature. That industrial dispute for regularization of their services as LDC, Case No. R/45/92 was filed. Said reference was answered against them. All the 1st party workman claims pay scale and wages of LDC on the basis of 12th pass qualification.

5. IIInd party management filed Written Statement at Page 8/1 to 8/5. He submits that the management is defence establishment under Ministry of Defence, Govt. of India. Their services are covered by statutory rules framed under Article 309 of the Constitution of India. The recruitment of all employees is carried out as per the said statutory rules and as other governing rules. That the workmen were appointed as ticket Sorters after following selection as per rules. The appointment was in pay scale Rs. 196-3-220-EB-3-232. All the workmen accepted their appointment as per the terms and conditions as Ticket Sorter. Their appointment is for Group D Post. They can be appointed as LDC after selection among other eligible Group D employees against 15% post reserved for Group D Category. IIInd party denies that these workmen were performing duties of LDC for management and is liable to wages for the post of LDC on the principle of equal pay for equal work. That Reference No. 45/92 filed these workmen was decided against them. All those employees were appointed as Ticket Sorter on Group D post, they were assigned duties of said grade since 1980. It is denied that for appointment of Ticket Sorter, only it is required to have knowledge of English English letters and sort out the metal tokens, passes etc. and hang them on the Board serially. IIInd party reiterated that any of those employees are not entitled to pay scale of LDC on principles of equal pay for equal work and prays for rejection of the claim.

6. 1st party workman filed rejoinder at Page 15/1 to 15/2. It is submitted by 1st party workman that charger of dues of ticket sorter is framed by management of the factory as per manual. The Ticket Sorter is required knowledge of English letters and sort out the metal tokens, passes etc. and hang them on the Board serially. Thus Ticket Sorter are required to perform the duties listed in the manual. He emphasized that they are entitled to pay scale of LDC as they are discharging duties of the said post.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the Action is legal management of Ordnance Factory, Katni in not paying

wages equal to LDC to S/Shri Vijay Shankar Shukla, Rakesh Kumar Verma, Vijay Kumar Shivhare, Balram Prasad Upadhyay and G.Toppo, Ticket Sorter is justified?

(ii) If so, to what relief the workman is entitled to?"

Relief prayed by 1st party workman is rejected

REASONS

8. From pleadings of the parties, it is clear that workmen are claiming pay scale of LDC on principles of equal pay for equal work. They have stated that they were appointed as Ticket Sorter after following selection process. It is further stated that all those employees are holding educational qualification- Higher Secondary. Their written test was held, such test is not required for the post of Ticket Sorter. He has further stated that they are performing their duties of (i) day to day basis attendance based on mustering in/out and casualty report submitted in time office by various sections/shops, (ii) Booking of casual overtime/ systematic overtime on receipt of sanction of the competent authority, (iii) That endorsement of annual increment, leave and accident leave on receipt of authorized documents, (iv) Calculation of late arrival time while mustering In/Out deduction of sort/petty leave period day to day basis and endorsement thereof, (v) Calculation/ totaling of whole month working at the end of month for the purpose of payment calculation & (vi) Calculation of casual/systematic overtime performed by each individuals in the particular month. Their duties are of clerical nature, they are paid salary of Ticket Sorter as revised time to time. The pay scale of LDC was Rs.260-400 in 3rd Pay Commission, Rs. 950-1600 under 4th Pay Commission and Rs.3050-4590 under 5th pay Commission. They claim pay scale of LDC on the basis of equal pay for equal work.

9. In his cross-examination, said witness Shri Vijay Shankar Shukla says that he was appointed as Ticket Sorter Group D post. He was working as LDC though he was holding post of Ticket Sorter. That no order in writing was given to him for working as LDC. He was working on oral directions. He admits that earlier reference was filed claiming post of LDC. He claims permission on the post of LDC. That earlier reference was decided against them.

10. The evidence of management's witness Shri Mahendra Prasad Tiwari, Shri V.N.Tiwari each consistent with the contention of the management that appointment of workman was on the post of Ticket Sorter. They were not doing clerical work, they are not entitled to pay scale for the post of LDC. Management's witness Shri Mahendra Tiwari in his cross-examination says that Shri Vijay Shankar Shukla has accepted post of LDC after the order of the management. That several persons are working as mazdoor

have left. Some persons were promoted. There is no order for Ticker Sorter to work as LDC. Management's witness Shri Mahendra Tiwari in his cross-examination says that the work of Ticket Sorter is properly fixed as per document Exhibit W-1 & W-2. Job description is properly made in document Exhibit M-4. It is denied that the work mentioned in Exhibit M-4 is of LDC and not of a Ticket Sorter. That Shri V.S.Shukla has been redesignated/permited. He admits that the earlier case was filed for promotion. The present case is filed for payment of wages on principles of equal work for equal pay.

11. At the time of argument, learned counsel for 1st party workman Shri Arvind Srivastava pointed out my attention to document Exhibit W-1 & W-2 . Para-184 relate to Ticket Sorter provide workman able to identify English letters and figures and sort out metal tokens, passes etc. and hang them on Boards serially is required for appointment for the post of Ticket Sorter.

12. Management produced document Exhibit M-1- appointment order of Ticket Sorter. There is no dispute that initially all those workmen were appointed as Ticket Sorter, copy of award in R/45/92 is produced at Exhibit M-3, claim of the 1st party workman for regularization for the post of LDC are rejected. Their claim was based on record that they were subjected to written test which were not required to the post of Ticket Sorter. That they were doing clerical duties. Their claim was not upheld in R/45/92.

13. Learned counsel for 2nd party relies on ratio held in—

"Case of State of Madhya Pradesh and others versus Ramesh Chandra Bajpai reported in 2010-1 Supreme Court Cases (L&S) 287. Their Lordship held that this can be invoked only when the employees are similarly situated, further held similarity in designation, or nature or quantum of work, is not determinative of equality in the matter of pay scales—Court has to consider factors like the source and mode of recruitment/appointment, qualifications, nature of work, value thereof, responsibilities, reliability, experience, confidentiality, functional need etc. Equality clause can be invoked in the matter of pay scales only when there is wholesale identity between the holders of two posts."

In present case, appointment of all those workmen was on the post of Ticket Sorter. Only on the basis that they were subjected to written test, they claimed that they were doing clerical job without any order in writing can hardly be accepted. The ratio held in above case does not support the claim of 1st party workman as their initial appointment was on the post of Ticket Sorter. The clerical duties stated by witnesses for 1st party workman Vijay Shukla cannot be accepted that all the 5 workmen were doing same duties. As per evidence in cross-examination

of Shri Vijay Shukla is permitted 6-7 years back. There is no evidence of the individual workman for what work they are doing since their appointment. Other workmen have not entered in the witness box. The evidence of witness for 1st party cannot be accepted as wholesale for all 5 workmen.

14. Next reliance is placed by Shri Shankaran Nair, Advocate in "case of T.Venkateswarulu Versus Executive Officer, Tirumala Tirupathi Devasthanams and Others reported in 2009 (1) Supreme Court Cases 546. Their Lordship held since the plea for parity of Draughtsman Grade-I with Supervisors had to be examined on the touchstone of Articles 14 and 16 of the Constitution, the burden was upon the appellant to establish discrimination by placing on record cogent materials. The crucial factor to be established is not only the functional parity of the two cadres, but also the mode of recruitment, qualification and the responsibilities attached to the two offices. All this information is necessary to analyse the rationale behind the State action in giving different treatment to two classes of its employees and then determine whether or not an invidious discrimination has been practiced.

The evidence in present case shows that all the 5 workmen were initially appointed as Ticket Sorter. The process for recruitment of ticket sorter and LDC is different. 1st party workman has not produced document about what are the duties of LDC. Only claim of Shri Vijay Shukla that duties performed by them that maintaining attendance register etc. is of clerical nature cannot enable them to claim the pay scale of LDC. For above reasons, I record my finding Point No.1 in Affirmative.

15. Point No.2- As per my finding in Point No.1, the relief prayed by workman deserves to be rejected.

16. In the result, award is passed as under :—

- (I) The action of the management of Ordnance Factory, Katni in not paying wages equal to LDC to S/Shri Vijay Shankar Shukla, Rakesh Kumar Verma, Vijay Kumar Shivhare, Balram Prasad Upadhyay and G.Toppo, Ticket Sorter is legal.

(2) Relief prayed by workman is rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 20 जन, 2013

का.आ. 1320.—औद्योगिक विवाद अधिनियम, 1947
 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जरनल मैनेजर, गवर्नमेन्ट औपियम एण्ड आलकाइड पैन्स्ट्री, नीमच के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या सी.जी.आई.टी./एल.सी./आर./98/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.06.2013 को प्राप्त हआ था।

[सं. एल-42012/87/1996-आई आर (डी यू)]
जोहन तोपनो, अवर सचिव

New Delhi, the 20th June, 2013

S.O.1320.—in pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (Ref. No. CGIT/LC/R/98/97) of the Central Government Industrial Tribunal-cum -Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the General Manager, Govt. Opium and Alkaloid Factory, Neemuch, and their workman, which was received by the Central Government on 12.06.2013.

[No. L-42012/87/1996-IR(DR)]

JOHAN TOPNO, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-
CUM- LABOUR COURT, JABALPUR**

NO CGIT/LC/R/98197

SHRI R.B. PATLE, Presiding Officer

Shri Gorang Trivedi
S/o Shri Bhanuprasad Trivedi,
"Tareesh" Bhuneshwar Mandir Road,
B.No.11, Neemuch-458441 ...Workman

Versus

General Manager,
Govt. Opium & Alkaloid Factory,
Neemuch,
Distt. Mandsaur . . .Management

AWARD

Passed on this 11th day of April, 2013

1. As per letter dated 14-3-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D.Act, 1947 as per Notification No. L-42012/87/96-IR(DU). The dispute under reference relates to:

"Whether the action of the management of the Government Opium and Alkaloid Factory, Neemuch in terminating the services of Shri Gorang Trivedi, S/o Shri Bhanuprasad Trivedi, Technician Gr. II w.e.f. 1-5-94 is legal and justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. 1st party workman submitted the statement of claim at Page 4/1 to 4/9. The case of workman is that in the year 1979, he was appointed as Technician Grade II, in 1981 he was made permanent. That he was member of the Union of the employees working in Hind party during the year 1991-92. He was pursuing demands of the employees from redressal with the management. The officers of the

IInd party were annoyed with him. That drinking water facility in Factory was not adequate during summer days and the employees working in the factory used pass to go out for drinking water. On 14-5-92, General Manager Mr. Ram Prakash orally directed to discontinue the said arrangement which caused unrest among the employees working in the IInd party. He being Vice President and Joint Secretary Mr. Rajkumar Jain on call of Production Manager Shri Vidya Prakash Gupta went to Production Manager. At the same time General Manager Shri Ram Prakash came there. That discussion was made in cordial atmosphere for restoring the drinking water facility. He pledged that quarrel had not occurred, they have not misbehaved with the General Manager. However 1st party and Rajkumar Jain were suspended. The chargesheet was issued to them. He had submitted reply to the chargesheet but it was not accepted. Departmental enquiry was initiated. Mr. A. Hussain Beg, Assistant General Manager was appointed as Enquiry Officer. Mr. M.K. Bhatnagar, A.O. was appointed as Presenting Officer. 1st party workman was represented by co-worker Pawan Khatol.

3. 1st party workman further submits that he was not given sufficient opportunity for his defence. On 20-5-93, the enquiry was finished. The Defence Representative was absent for death of his father. The enquiry was not adjourned even after his request. Management witness was required to be cross-examined. The statement of witnesses were not recorded before Enquiry Officer. After production of statement of witnesses recorded earlier, 1st party was called upon to cross-examine the witness. That principles of natural justice was not followed. The enquiry is vitiated. That he had not received intimation of the enquiry proceedings. That he had given reply to the showcause notice. Without considering reply, punishment of dismissal was imposed against him. Enquiry was not fair and proper. That he was dismissed from service. 1st party workman prayed for his reinstatement with back wages.

4. IInd party filed Written Statement at Page 10/1 to 10/5. The allegations of 1st party are denied. According to IInd party management, workman was appointed on 15-3-79 as Technician Grade-II. He was confirmed in the said post on 14-3-98. The chargesheet was issued to the 1st party on 11-9-92. The articles of charges No. 1 to 5 are reproduced in the Written Statement. The charges relates to abusing and misbehaving with General Manager Shri Ram Prakash on 14-5-92. That the 1st party workman had unauthorisely left place of duty without permission. The misconduct was alleged under Rule 7 and Rule 3(1)(iii) of C.C.S. (Conduct) Rules, 1964 and also Article 13 of Standing Orders. IInd party management futher submits that Enquiry Officer Shri Beg was appointed, Shri A.K. Bhatnagar was appointed as Presenting Officer, delinquent workman was represented by defence representative Shri Pawan Khatod. It is denied that enquiry is conducted in violation of principles of natural justice. IInd party management submits

that misconduct against 1st party is proved. The dismissal of 1st party workman is just.

5. 1st party workman filed rejoinder at Page 12/1 to 12/4 denying contentions in the Written Statement. It is contended that enquiry conducted against workman is not fair and proper. Principles of natural justice was not followed. 1st party file affidavit of his evidence at Page 30.

6. Considering pleading between the parties my learned predecessor recorded evidence of the parties and decided preliminary issue — "Whether the Departmental Enquiry conducted by management against both the workmen of both references is legal and proper?" The preliminary issue in both references in 97/97 and 98/99 are decided in common order and held that the enquiry held against workman in both the cases are not legal and proper. The management was directed to adduce evidence to prove his conduct in Court. The said order is not challenged by workman. It reached finality and therefore other issues needs to be decided. The issues are as under and my findings are recorded against each of them for the reasons as below:—

- | | |
|--|---|
| (i) Whether the misconduct alleged against workman is proved by the management? | Not proved |
| (ii) If so, whether the punishment of dismissal imposed against 1st party workman is just and proper? | In Negative |
| (iii) If so, to what relief workman is entitled? | 1st party workman is entitled to reinstatement with 50% back wages. |

REASONS

7. As discussed above, the preliminary issue is decided by my predecessor and held that enquiry conducted against workman is not legal and proper. The enquiry is vitiated. The management was permitted to prove misconduct adducing the evidence. The management was given opportunity for adducing evidence on request of management, the case was adjourned from 23-12-11, 28-3-12, 30-7-12, 6-9-12, 4-10-12, 14-11-12 but the witnesses were not produced. The management's right to lead evidence was closed on 26-2-2013. Thus as no evidence is adduced by management to prove misconduct alleged against 1st party workman. I record my finding on Point No.1 in Negative.

8. Point No.2—In view of my finding that misconduct alleged against workman are not proved by management by adducing evidence, the enquiry was held not legal, proper. The enquiry was vitiated. The management has not

proved the misconduct. The question arises to what relief the workman is entitled?

9. On other issues i.e. whether the punishment of dismissal is proper or legal, IInd party has not adduced any evidence. Workman filed affidavit of his evidence. He has stated in his affidavit that he was appointed in 1975, he was confirmed in 1981. He was active member of the Union. He was pursuing grievances of the employees working in IInd party. The absence was annoyed from him. That no incident about alleged misconduct had occurred, no quarrel has taken place. That as the facility of drinking water going outside the factory premises was discontinued, there was unrest. He alongwith Rajkumar Jain had gone for discussion with Production Manager. In his cross-examination, he says at the time of discussion with Branch Manager about drinking water facility, the pass facility was discontinued. They have not given any slogans nor misbehaved with General Manager. At fag end of his evidence, he says that his family consist of 5 members, his both sons have completed their education and they are in employment. He owns a house. Family expenses are met from pension of his mother and help from relatives. His relative is not examined about how much they help they have provided. How much pension is received by his mother has not come in his evidence. The services of 1st party were discontinued in the year 1994 about 19 years back. Certainly the children would have been of tender age. 1st party is holding agriculture land. It is natural that he would have been engaged in cultivating lands and getting income from it. Keeping those aspects in my mind and misconduct alleged against the workman are not proved, dismissal of 1st party workman is illegal. He is entitled for reinstatement.

10. Learned counsel for Ist Party Shri Shashi relies on—

Ratio held in case of Neeta Kapilash and Presiding Officer, Labour Court and another in 1999 ILLJ-275. Their Lordship of the Apex Court dealing with scope of Section 11-A considering Domestic Enquiry conducted by management was found to be not fair and proper. Labour Court giving opportunity to management to adduce evidence on merits and justify dismissal. Management refusing to avail opportunity to lead evidence to justify dismissal of workman. Workman did not lead any evidence since management did not lead evidence to justify dismissal on merits. Legal position is jurisdiction of Labour court of Tribunal to itself decide merits of charge on fresh evidence remains unaltered even after introduction of Section 11-A Tribunal had not only power to set aside order of dismissal and direct reinstatement but also power to award lesser punishment under Section 11-A. Proceedings of defective domestic enquiry would not constitute. "Fresh Evidence" and :Material on Record'- Defective

enquiry proceedings had to be ignored altogether. Workman entitled to relief as claimed since management did not lead any fresh evidence on merits and workman was justified in stating that he too would not lead any fresh evidence. Claim of workman cannot be rejected for not leading evidence. Workman was entitled to be granted relief then and there."

"In case of Hardwari Lal and State of UP and others reported in 2000 I LLJ P-495 . Their Lordship considering non examination of Police Inspector who recorded statement of police constable who is stated to have abused and witness who is said to have accompanied chargesheet. Police constable to hospital for medical examination would vitiate departmental enquiry. The dismissal was set aside. The police constable is directed to be reinstated with 25 % back wages."

"In Roop Singh Negi versus Punjab National Bank and others reported in 2009(2) Supreme Court Cases 570. Their Lordship have held that in Departmental Enquiry, mere production of documents is not enough. Contents of documentary evidence have to be proved by documentary evidence. Further held that FIR is not an evidence without actual proof of facts stated therein."

The ratio held in the case has no direct bearing with the present case. Learned counsel for IInd party management submits that enquiry is held vitiated after very long time. It has become difficult to procure witnesses for proving misconduct in Court. It may be considered while appreciating claim for reinstatement.

11. Considering the evidence that 1st party workman holds agricultural lands and in my considered view reinstatement with 50 % would be appropriate. Accordingly I answer Point No.2.

12. In the result, award is passed as under:-

- (1) The action of the management in terminating the services of 1st party workman Shri Gorang Trivedi, S/o Shri Bhanuprasad Trivedi, Technician Gr.II w.e.f. 1-5-94 is legal and proper.
- (2) IInd party management is directed to reinstate 1st party workman with 50 % back wages and continuity of service."

R.B. PATLE, Presiding Officer

नई दिल्ली, 20 जून, 2013

का.आ. 1321.—औद्योगिक विवाद अधिनियम, 1947
(1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जनरल मैनेजर, गवर्नरमेट औपियम एण्ड आल्काइड फैक्ट्री, नीमच के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद

में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या सी.जी. आईटी/एल.सी./आर./97/97) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.06.2013 को प्राप्त हुआ था।

[सं. एल 42012/79/1996-आई आर (डी यू)]

जोहन तोपनो, अवर सचिव

New Delhi, the 20th June, 2013

S.O. 1321.—in pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (Ref. No. CGIT/LC/R/97/97) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the General Manager, Govt. Opium and Alkaloid Factory, Neemuch, and their workman, which was received by the Central Government on 12.06.2013.

[No. L-42012/79/1996-IR(DU)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM- LABOUR COURT, JABALPUR

NO. CGIT/LC/R/97/97

SHRI R.B. PATLE, Presiding Officer

Shri Rajkumar Jain,
S/o Shri Udhaylal Jain,
2, Jawahar Nagar, . . . Workman
Neemuch

Versus

General Manager,
Govt. Opium and Alkaloid Factory,
Neemuch,
Distt. Mandsaur . . . Management

AWARD

Passed on this 11th day of April 2013

1. As per letter dated 14-3-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-42012/79/96-IR(DU). The dispute under reference relates to :

"Whether the action of the management of the Government Opium and Alkaloid Factory, Neemuch in terminating the services of Shri Rajkumar Jain, S/o Shri Udaylal Jain, Technician Gr.I w.e.f. 1-5-94 is legal and justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to

the parties. Ist party workman submitted the statement of claim at Page 2/1 to 2/11. The case of workman is that in the year 1975, he was appointed as Technician Grade II, in 1979 he was confirmed as Technician Grade-I. That he was secretary of the Employees Union during the year 1991-92. He was pursuing demands of the employees. The officers of the IIInd party were annoyed with him.

3. That the employees working in IIInd party were provided drinking water facility. During summer days, said facility was not adequate and the employees were permitted to go out of factory premises. Pass was used for the said purpose. On 13-5-92, General Manager Mr. Ram Prakash orally directed to discontinue the said arrangement. There was unrest among the employees working in the IIInd party. He being Joint Secretary and Gaurang Trivedi vice President of the Union on call of Production Manager Simi Vidya Prakash Gupta went to Production Manager. At the same time General Manager Shri Ram Prakash came there. That discussion was made in cordial atmosphere for restoring the drinking water facility. It is contended that any quarrel had not occurred during the discussion. However the General Manager Shri Ram Prakash issued order of suspension of 1st party and Shri Gaurang Trivedi. The chargesheet was issued after 5 months alleging that the Ist party and Gaurang Trivedi had misbehaved with General Manager Ram Prakash. Ist party has denied charges filing his reply. The reply was not accepted. Departmental enquiry was initiated. Mr. A. Hussain Beg, Assistant General Manager was appointed as Enquiry Officer. Mr. M.K. Bhatnagar, A.O was appointed as Presenting Officer. Ist party workman was represented by co-worker Pawan Khatol. Ist party workman contends that the enquiry was not properly conducted. He was not given sufficient opportunity for his defence. The Defence Representative was absent for death of his father. The enquiry was not adjourned even after his request. He has given details of Enquiry Proceedings compelling to cross-examine witnesses of the management. The statement of witnesses of the management were produced, their statement was not recorded before Enquiry Officer. However the witnesses were required to be cross-examined. The showcause notice was issued. Reply was given to show cause notice without considering his submissions, his services were terminated from 29-4-94. Ist party workman contends that enquiry was not conducted following principles of natural justice. The findings of Enquiry Officer are not proper. His services are terminated by victimization. He prays for setting aside order of termination and reinstatement with back wages.

4. IIInd party filed Written Statement at Page 5/1 to 5/7. The allegations of Ist party in respect to alleged incident are denied. It is submitted that chargesheet was issued to workman. The articles of charges No. 1 to 5 are reproduced in the Written Statement. The substance of the charges are on 14-5-92, Ist party workman used unparliamentary language against General Manager Shri Ram Prakash,

misbehaved with him and as such acted in a way of unbecoming on part of Government servant. The misconduct was alleged under Rule 7 and Rule 3(1)(iii) of C.C.S.(Conduct) Rules, 1964 and also Article 13 of Standing Orders. That the charges were denied by the 1st party. Enquiry was conducted as per rules. Proper opportunity was given for defence of workman. The witnesses were cross-examined by defence representative. It is denied that punishment of dismissal was imposed by way of victimization.

5. 1st party workman filed rejoinder at Page 6/1 to 6/2 contending that he was not given proper opportunity for his defence. The enquiry was fixed on 22-9-93. Intimation was not received by him. Enquiry was closed without giving opportunity for his defence.

6. Considering pleading between the parties my learned predecessor recorded evidence of the parties and decided preliminary issue "Whether the Departmental Enquiry conducted by management against both the workmen of both references is legal and proper?" preliminary issue in both references in 97/97 and 98/99 are decided by common order and held that the enquiry held against workman in both the cases is not legal and proper. The management was permitted to adduce evidence to prove misconduct in Court. The said order is not challenged by workman. It reached finality and therefore other issues needs to be decided. The issues are as under and my findings are recorded against each of them for the reasons as below :—

- | | |
|--|--|
| (i) Whether the misconduct alleged against workman is proved by the management? | Not proved |
| (ii) If so, whether the punishment of dismissal imposed against 1st party workman is just and proper? | In Negative |
| (iii) If so, to what relief the workman is entitled? | 1st party workman is entitled to reinstatement with 50 % back wages. |

REASONS

7. As discussed above, the preliminary issue is decided by my predecessor and held that enquiry conducted against workman is not legal and proper. The enquiry is vitiated. The management was permitted to prove misconduct adducing the evidence. The management was given opportunity for adducing evidence on request of management, the case was adjourned from 23-12-11, 28-3-12, 30-7-12, 6-9-12, 4-10-12, 14-11-12 but the witnesses were not produced. The management's right to lead evidence was closed on 26-2-2013. Thus as no evidence is adduced by management to prove misconduct alleged against 1st party workman, I record my finding on Point No.1 in Negative.

8. Point No. 2- In view of my finding that misconduct

alleged against workman are not proved by management by adducing evidence, the enquiry was held not legal, proper. The enquiry was vitiated. The management has not proved the misconduct. The question arises to what relief the workman is entitled?

9. On other issues i.e. whether the punishment of dismissal is proper or legal, 1Ind party has not adduced any evidence. Workman filed affidavit of his evidence on 4-10-2012. He has stated in his affidavit that he was appointed in 1975, he was confirmed in 1981. He was active member of the Union. He was pursuing grievances of the employees working in 1Ind party. The absence was annoyed from him. That no incident about alleged misconduct had occurred, no quarrel has taken place . That as the facility of drinking water going outside the factory premises was discontinued, there was unrest. He alongwith Gaurang Trivedi had gone for discussion with Production Manager.

In his cross-examination, he says at the time of discussion with Branch Manager about drinking water facility, the pass facility was discontinued. They have not given any slogans nor misbehaved with General Manager. At fag end of his evidence, he says that his family consist of 5 members. The services of 1st party were discontinued in the year 1994 about 19 years back. Certainly the children would have been of tendor age. 1st party is holding agriculture land. It is natural that he would have been engaged in cultivating lands and getting income from it. Keeping those aspects in my mind and misconduct alleged against the workman are not proved, dismissal of 1st party workman is illegal. He is entitled for reinstatement.

10. Learned counsel for 1st party Shri Shashi relies on—

Ratio held in case of Neeta Kaplish and Presiding Officer, Labour Court and another in 1999 ILLJ-275 . Their Lordship of the Apex Court dealing with scope of Section 11-A considering Domestic Enquiry conducted by management was found to be not fair and proper. Labour Court giving opportunity to management to adduce evidence on merits and justify dismissal. Management refusing to avail opportunity to lead evidence to justify dismissal of workman. Workman did not lead any evidence since management did not lead evidence to justify dismissal on merits. Legal position is jurisdiction of Labour Court of Tribunal to itself decide merits of charge on fresh evidence remains unaltered even after introduction of Section 11-A Tribunal had not only power to set aside order of dismissal and direct reinstatement but also power to award lesser punishment under Section 11-A. Proceedings of defective domestic enquiry would not constitute. "Fresh Evidence" and : 'Material on Record'- Defective enquiry Proceedings had to be ignored altogether. Workman entitled to relief as claimed since

management did not lead any fresh evidence on merits and workman was justified in stating that he too would not lead any fresh evidence. Claim of workman cannot be rejected for not leading evidence. Workman was entitled to be granted relief then and there."

"In case of Hardwari Lal and State of UP and others reported in 2000 I LLJ P-495 . Their Lordship considering non examination of Police Inspector who recorded statement of police constable who is stated to have abused and witness who is said to have accompanied chargesheet. Police constable to hospital for medical examination would vitiate departmental enquiry. The dismissal was set aside. The police constable is directed to be reinstated with 25 % back wages."

"In Roop Singh Negi versus Punjab National Bank and others reported in 2009(2) Supreme Court Cases 570. Their Lordship have held that in Departmental Enquiry, mere production of documents is not enough. Contents of documentary evidence have to be proved by documentary evidence. Further held that FIR is not an evidence without actual proof of facts stated therein."

The ratio held in the case has no direct bearing with the present case.

11. Considering the evidence that 1st party workman holds agricultural lands and in my considered view reinstatement with 50 % would be appropriate. Accordingly I answer Point No.2.

12. In the result, award is passed as under:-

- (1) The action of the management in terminating the services of 1st party workman Shri Rajkumar Jain, S/o Shri Udaylal Jain, Technician Gr. I w.e.f. 1-5-94 is legal and proper.
- (2) 2nd party management is directed to reinstate 1st party workman with 50 % back wages and continuity of service."

13. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R.B. PATLE, Presiding Officer

नई दिल्ली, 20 जून, 2013

का.आ. 1322.—औद्योगिक विवाद अधिनियम, 1947
(1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ड्राइवर, सैट्रल पर्म मशीनरी ट्रेनिंग एण्ड टेस्टिंग इन्सटीट्यूट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या सी.जी. आई.टी/एल.सी./आर./158/97) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.06.2013 को प्राप्त हुआ

था

[सं. एल-42012/53/1996-आई आर (डी यू)]

जोहन तोपनो, अवर सचिव

New Delhi, the 20th June, 2013

S.O.1322.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/LC/R/158/97) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the Director, Central Farm Machinery Training & Testing Institute and their workman, which was received by the Central Government on 12.06.2013.

[No. L-42012/53/1996-IR(DU)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/158/97

SHRI R.B. PATLE, Presiding Officer

Smt. Latha Bai,
w/o Shri Ramesh Vele,
Behind Rly. Station,
Godi Mohalla,
Budni,
Distt. Sehore (MP)

...Workman

Versus

The Director
Central Farm Machinery Training and
Testing Institute, LTractor Nagar,
PO Budni,
Distt Sehore (MP)

...Management

AWARD

Passed on this 12th day of April, 2013

1. As per letter dated 30.5.97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-42012/53/96-IR(DU). The dispute under reference relates to :

"Whether the action of the management of Central Farm Machinery Training and Testing Institute, Budni in terminating the services of Smt. Latha Bai, W/o Shri Ramesh Vele is legal and justified? If not, to what relief the workman is entitled?"

2. Ist party workman is challenging his termination of services in the dispute under reference. even after issuing

notices, he has not participated in the proceeding, no statement of claim is filed. Ist party is proceeded ex parte on 10.4.08.

3. IIInd party management also not filed Written Statement. From conduct of the Ist party, it is clear that the parties are not pursuing or participating in the dispute.

4. In the result, award is passed as under:-

"Reference is disposed off as No Dispute Award."
R. B. PATLE, Presiding Officer

नई दिल्ली, 26 जून, 2013

का.आ. 1323.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91-के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एतदद्वारा भारत हेवी एंड्रेस और वेसेल्स लिमिटेड, विशाखापट्टनम के कारखानों/स्थापनाओं के नियमित कर्मचारियों को इस अधिनियम के प्रवर्तन से छूट प्रदान करती है। यह छूट, अधिसूचना जारी होने की तारीख से एक वर्ष की अवधि के लिए लागू रहेगी।

2. उक्त छूट निम्नलिखित शर्तों के अधीन है; अर्थात्:-

- (1) पूर्वोक्त स्थापना जिसमें कर्मचारी नियोजित हैं, एक रजिस्टर रखेगी, जिसमें छूट प्राप्त कर्मचारियों के नाम और पदनाम दिखाये जायेंगे;
- (2) इस छूट के होते हुए भी, कर्मचारी उक्त अधिनियम के अधीन ऐसी प्रसुविधाएं प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट के प्रवृत्त होने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं;
- (3) छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे;
- (4) उक्त कारखाने/स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने/स्थापना पर उक्त अधिनियम (जिसे इसमें इसके पश्चात उक्त अवधि कहा गया है) प्रवर्तमान था ऐसी विवरणियां, ऐसे प्रारूप में और ऐसी विशिष्टियों सहित देगा तो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं;
- (5) निगम द्वारा उक्त कर्मचारी राज्य बीमा अधिनियम की धारा 45 की उप-धारा (1) के अधीन नियुक्त किया गया कोई सामाजिक सुरक्षा अधिकारी या निगम का इस नियमित प्राधिकृत कोई अन्य पदधारी;
- (i) धारा 44 की उप-धारा (1) के अधीन, उक्त अवधि के बाबत दी गई किसी विवरण की विशिष्टियों को सत्यापित करने के प्रयोजनार्थ; अथवा
- (ii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी राज्य

बीमा (साधारण) विनियम, 1950 द्वारा यथाअपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या

(iii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और बस्तु रूप में पाने का हकदार बना हुआ है या नहीं; या

(iv) यह अभिनिश्चित करने के प्रयोजनार्थ कि उस अवधि के दौरान, जब उक्त कारखाने के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा:-

(क) प्रधान या आसन्न नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे उपरोक्त निरीक्षक या अन्य पदधारी आवश्यक समझता है; अथवा

(ख) ऐसे प्रधान या आसन्न नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से वह अपेक्षा करना कि वह व्यक्तियों के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या

(ग) प्रधान या आसन्न नियोजक की, उसके अधिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या

(घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण लेना;

(ङ) यथानिधीरित अन्य शक्तियों का प्रयोग करना।

6. विनिवेश/निगमीरण के मामले में, प्रदत्त छूट स्वतः रद्द हो जाएगी और तब नए प्रतिष्ठान को छूट हेतु समुचित सरकार की अनुमति लेनी होगी।

[संख्या एस-38014/7/2012-एसएस-]

नरेश जायसवाल, अवर सचिव

New Delhi, the 26th June, 2013

S.O. 1323.—In exercise of the power conferred by Section 88 read with Section 91-A of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby exempts the regular employees of factories/establishments of Bharat Heavy Plates & Vessels Limited, Visakhapatnam from the operation of the said Act. The exemption shall be effective from the date of issue of notification for a period of one year.

2. The above exemption is subject to the following conditions namely:-

- (1) The aforesaid establishments wherein the employees are employed shall maintain a register showing the name and designations of the exempted employees';
- (2) Notwithstanding this exemption, the employees shall continue to receive such benefits under the said Act to which they might have become entitled to on the basis of the contributions paid prior to the date from which exemption granted by this notification operates;
- (3) The contributions for the exempted period, if already paid, shall not be refundable;
- (4) The employer of the said factory/establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;
- (5) Any Social Security Officer appointed by the Corporation under Sub-Section (1) of Section 45 of the said ESI Act or other official of the Corporation authorized in this behalf by it, shall, for the purpose of :-
 - (i) Verifying the particulars contained in any returned submitted under sub-section (1) of section 44 for the said period; or
 - (ii) Ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or
 - (iii) Ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or
 - (iv) Ascertaining whether any of the provisions of the Act had been complied with during the

period when such provisions were in force in relation to the said factory to be empowered to:

- (a) require the principal or immediate employer to him such information as he may consider necessary for the purpose of this Act; or
- (b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or
- (c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee ; or
- (d) make copies of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises,
- (e) exercise such other powers as may be prescribed.
- (f) In case of disinvestment/corporatization, the exemption granted shall become automatically cancelled and then the new entity will have to approach the appropriate Government for exemption.

[No. S-38014/7/2012-SS-I]

NARESH JAISWAL, Under Secy.

नई दिल्ली, 27 जून, 2013

का.आ. 1324.—कर्मचारी राज्य बीमा अधिनियम 1948 (1948 का 34) की धारा-1 की उप धारा-(3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतदद्वारा 01 जुलाई, 2013 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-5 और 6[६] धारा-76 की उप धारा-(1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध । राजस्थान राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात्:

“जिला और तहसील-बांसवाड़ा में राजस्व ग्राम लोधा

और कूपड़ की सीमाओं के अंतर्गत आने वाले क्षेत्र।

[सं. एस-38013/44/2013-एस.एस. I]

नरेश जायसवाल, अवर सचिव

New Delhi, the 27th June, 2013

S.O. 1324.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the **1st July, 2013** as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Rajasthan namely:-

"The areas comprising within the revenue village Lodha and Kupra in Tehsil & District Banswara"

[No. S-38013/44/2013-S.S. I]

NARESH JAISWAL, Under Secy.

नई दिल्ली, 27 जून, 2013

का.आ. 1325.—कर्मचारी राज्य बीमा अधिनियम 1948 (1948 का 34) की धारा 1 की उप-धारा-(3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा **01 जुलाई, 2013** को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-5 और 6[धारा-76 की उप-धारा-(1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध तमिलनाडु राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात्:

| | |
|------------------------------|---|
| केन्द्र | निम्न क्षेत्र के अंतर्गत आने वाले राजस्व गाँव |
| तिरुवल्लूर जिला | 1. विच्चूर |
| पोनेरी तालुक (वीचूर गाँव) | 2. आंदार कुप्पम 3. वैक्काडु |
| मण्णी परिधि | के अंतर्गत आने वाले राजस्व गाँव |

[सं. एस-38013/45/2013-एस.एस. I]

नरेश जायसवाल, अवर सचिव

New Delhi, the 27th June, 2013

S.O. 1325.—In exercise of the powers conferred by

sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st July, 2013 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI (except Sub-Section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas in the State of Tamil Nadu namely:-

| CENTRE | AREAS COMPRISING THE REVENUE VILLAGES OF |
|----------------------|--|
| Manali Peripherals | 1. Vichoor |
| (Vichoor Village) | 2. Andarkuppam |
| Ponneri Taluk, | 3. Vaikkadu |
| Thiruvallur District | |

[No. S-38013/45/2013-S.S-1]

NARESH JAISWAL, Under Secy.

नई दिल्ली, 3 जुलाई, 2013

का.आ. 1326 —राष्ट्रपति, श्री हरबंश कुमार सक्सेना, को 28.06.2013 (पूर्वाह्न) से केन्द्रीय सरकार औद्योगिक न्यायाधीकरण-सह-त्रिम न्यायालय संख्या 2, दिल्ली, के पीठासीन अधिकारी के रूप में 27.06.2017 तक अथवा अगले आदशों तक, जो भी पहले हो, नियुक्त करते हैं।

[सं. ए.-11016/3/2012-सी.एल.एस-II]

राजेश कुमार, अवर सचिव

New Delhi, the 3rd July, 2013

S.O. 1326.—The President is pleased to appoint Shri Harbansh Kumar Saxena as Presiding Officer of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Delhi w.e.f. 28.06.2013 (F.N.) for a period upto 27.06.2017 or until further orders, which is earlier.

[No. A-11016/3/2012-CLS-II]

RAJESH KUMAR, Under Secy.